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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: NOV 10 2010
IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1)

ON BEHALF OF PETITIONER:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act, to perform services as a religious editor. The director determined that the petitioner had not established it qualifies as a bona fide nonprofit religious organization.

On appeal, the petitioner states that it does not have a determination letter from the Internal Revenue Service (IRS) but requests that other documentation be considered because of its religious practices and beliefs. The petitioner submits additional documentation in support of the appeal.

Section 101(a)(15)(R) of the Act pertains to an alien who:

(i) for the 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States; and

(ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii).

Section 101(a)(27)(C)(ii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii), pertains to a nonimmigrant who seeks to enter the United States:

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) . . . in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) . . . in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation.

The issue presented is whether the petitioner has established that it is a bona fide nonprofit tax-exempt religious organization.

The regulation at 8 C.F.R. § 214.2(r)(3) defines a tax-exempt organization as “an organization that has received a determination letter from the IRS establishing that it, or a group it belongs to, is exempt from taxation in accordance with section[] 501(c)(3) of the Internal Revenue Code” (IRC). Additionally, the regulation at 8 C.F.R. § 214.2(r)(9) provides:

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

(i) A currently valid determination letter from the IRS showing that the organization is a tax-exempt organization; or

(ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or

(iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3), or subsequent amendment or equivalent sections of prior enactments, of the [IRC], as something other than a religious organization:

(A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;

(B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;

(C) Organizational literature, such as books, articles, brochures, calendars, flyers, and other literature describing the religious purpose and nature of the activities of the organization; and

(D) A religious denomination certification. The religious organization must complete, sign and date a statement certifying that the petitioning organization is affiliated with the religious denomination. The statement must be submitted by the petitioner along with the petition.

With the petition, the petitioner submitted an excerpt from the IRS Publication 1828, *Tax Guide for Churches and Religious Organizations*, which states that “Churches that meet the requirements of IRC section 501(c)(3) are automatically considered tax exempt and are not required to apply for and obtain recognition of tax-exempt status from the IRS.” The petitioner also submitted a copy of a July 22, 2008 Form SSA-1458, Certification By Religious Group, a form used by the Social Security Administration (SSA) to determine if a religious group meets the qualifications set out in Section 1402(g) of the IRC permitting its members to be exempt from payment of certain Social Security taxes.

In a request for evidence (RFE) dated January 26, 2010, the director advised the petitioner that U.S. Citizenship and Immigration Services (USCIS) regulations require the submission of a currently valid determination letter from the IRS in order to establish that the organization

qualifies as a nonprofit religious organization. In response, the petitioner submitted a copy of a February 17, 2009 letter from the SSA Office of Income Security Programs, in which the agency found that the petitioner is exempt from payment of Social Security taxes under section 1402(g) of the IRC. In his March 3, 2010 letter accompanying the petitioner's response, counsel stated:

As the petitioner is part of the Old Order Amish . . . which has a long history of being respected by the U.S. government without having nor being required to have any documentation to prove its tax exempt status, please accept the SSA letter in lieu of any IRS determination letter.

The director denied the petition based on the petitioner's failure to provide a valid determination letter from the IRS establishing its status as a religious organization exempt from income taxes under section 501(c)(3) of the IRC. On appeal, the petitioner states that it does "not seek exemption, the only exception being Social Security due to our belief and practice of providing for our own," and that the organization has "an inherent aversion to handing over even a slight degree of control or oversight to the state." The petitioner further states:

We fear that something as seemingly innocent as official recognition of 501(c)(3) status may be the first step away from the informal, loosely structured, faith based relationships we now enjoy toward a rigid, formal, and institutionalized religion that has lost its value to transform the lives and relationships of our families.

The petitioner submits a copy of its articles of incorporation and bylaws, and a copy of IRS Form 1023, Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code. The petitioner admits that the documents were prepared specifically for the purpose of this visa petition but asserts that they accurately express its goals and operating standards. The petitioner also states that the IRS Form 1023 has not been filed with the IRS.

We note that the regulations governing immigration under the purview of the USCIS and those governing federal taxation under the purview of the IRS serve two different purposes. While the IRS regulations may automatically exempt churches as nonprofit organizations for the purpose of determining whether such an organization is required to file a federal tax return and pay taxes, the USCIS regulation offers no such exemption for those organizations who seek benefits under immigration laws.

The Act and its implementing regulations do not require an organization to establish that it is a church to qualify as a bona fide nonprofit religious organization; nonetheless, it must establish that its tax-exemption is based on its religious nature. As discussed earlier, the IRS and USCIS regulations serve different purposes, and while a currently valid letter from the IRS recognizing an organization as a church is required under USCIS regulation, the IRS automatic exemption of a church as nonprofit is unrelated to the USCIS requirements that the organization establish itself as both a religious organization and as a nonprofit organization for immigration purposes. When USCIS published the relevant regulation, supplementary information published with the regulation explained USCIS's reasoning:

Several commenters objected to the proposed requirement that petitioners must file a determination letter from the IRS of tax-exempt status under IRC section 501(c)(3), 26 U.S.C. 501(c)(3), with every petition. Commenters pointed out that the IRS does not require churches to request a determination letter to qualify for tax-exempt status. A designation that an organization is a “church” is sufficient to qualify for tax-exempt status. Although some churches choose to request a formal IRC section 501(c)(3) determination, they are not required to do so. . . .

USCIS recognizes that the IRS does not require all churches to apply for a tax-exempt status determination letter, but has nevertheless retained that requirement in this final rule. *See Internal Revenue Service, Tax Guide for Churches and Religious Organizations: Benefits and Responsibilities under the Federal Tax Law* (IRS pub. no. 1828, Rev. Sept. 2006). A requirement that petitioning churches submit a tax determination letter is a valuable fraud deterrent. An IRS determination letter represents verifiable documentation that the petitioner is a bona fide tax-exempt organization or part of a group exemption. Whether an organization qualifies for exemption from federal income taxation provides a simplified test of that organization’s non-profit status.

Requiring submission of a determination letter will also benefit petitioning religious organizations. A determination letter provides a petitioning organization with the opportunity to submit exceptionally clear evidence that it is a bona fide organization. 73 Fed. Reg. 72276, 72279-80 (Nov. 26, 2008).

In this proceeding, the issue is not whether the IRS would automatically regard the petitioner as tax-exempt, but whether the petitioner has produced the required IRS determination letter that USCIS regulations require. As the petitioner has failed to provide the required letter from IRS, it has failed to establish that it is a bona fide nonprofit religious organization as defined by the regulation. The regulation makes no exception for the denomination of the petitioning organization.

Beyond the decision of the director, the petitioner has failed to establish how it intends to compensate the beneficiary. The regulation at 8 C.F.R. § 214.2(r)(11) provides:

Evidence relating to compensation. Initial evidence must state how the petitioner intends to compensate the alien, including specific monetary or in-kind compensation, or whether the alien intends to be self-supporting. In either case, the petitioner must submit verifiable evidence explaining how the petitioner will compensate the alien or how the alien will be self-supporting. Compensation may include:

(i) *Salaried or non-salaried compensation.* Evidence of compensation may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable

documentation that room and board will be provided; or other evidence acceptable to USCIS. IRS documentation, such as IRS Form W-2 or certified tax returns, must be submitted, if available. If IRS documentation is unavailable, the petitioner must submit an explanation for the absence of IRS documentation, along with comparable, verifiable documentation.

The petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that it would pay the beneficiary \$1,200 per month and would provide him with housing, including payment of monthly utility bills. The petitioner submitted an August 11, 2009 letter from the [REDACTED] stating that the organization has had an account with the bank since November 2006. The petitioner, however, submitted no other information about its financial status and submitted no documentation regarding the home that it stated it would provide to the beneficiary.

The petitioner has failed to submit verifiable documentation to establish how it intends to compensate the beneficiary.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.