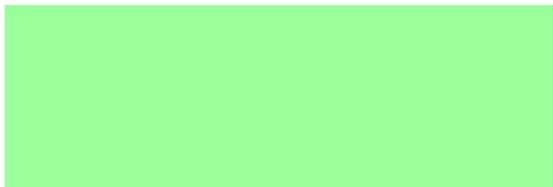


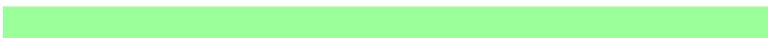



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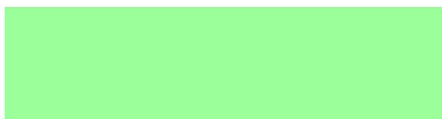


Date: **MAY 31 2013** Office: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary: 

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

ON BEHALF OF PETITIONER:



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.

Thank you,

  
Ron Rosenberg  
Acting 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 AAO will withdraw the director's decision and will remand the petition for further action and consideration.

The petitioner seeks classification of the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R) of the Act to perform services as a pastor in its Astoria, New York church. The director determined that the petitioner had not established that it qualifies as a bona fide nonprofit religious organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code (IRC).

On appeal, counsel states that the petitioner is covered under the group exemption granted to the [REDACTED] in Cleveland, Tennessee. 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 [Internal Revenue Service] establishing that it, or a group it belongs to, is exempt from taxation in accordance with section[] 501(c)(3) of the [IRC]." 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, filed on September 6, 2012, the petitioner submitted a copy of an August 29, 2008 letter from the [REDACTED] in Cleveland, Tennessee, verifying that the petitioner is covered under the group exemption granted to the [REDACTED] by the IRS. Although the letter indicated that a copy of the group exemption letter was enclosed, no such letter was submitted with the petition.

In a September 13, 2012 request for evidence (RFE), the director instructed the petitioner to submit documentation in accordance with the above-cited regulation to establish that it is a bona fide nonprofit religious organization. In response, the petitioner submitted a copy of an October

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20, 1972 letter from the IRS to the [REDACTED] advising the organization that the IRS recognized it and its subordinate units as tax-exempt under sections 501(c)(3) and 170(b)(1)(A)(i) of the IRC. The petitioner also resubmitted the 2008 letter from the [REDACTED] and documentation reflecting that the petitioner had filed its articles of corporation with the State of Pennsylvania.

In a December 6, 2012 Notice of Intent to Deny (NOID) the petition, the director advised the petitioner:

The letter [from the IRS] is not current, does not contain an Employer Identification Number (EIN), and does not contain an accurate address of the [REDACTED] in Cleveland, TN. Further, the letter indicates on page 2, paragraph 3, that the [REDACTED] is to notify the IRS within 45 days after the close of their annual accounting period, information about changes to their subordinates. This information is recorded and can be found under the IRS Exempt Organizations Select Check, formally Pub. 78, web site: <http://apps.irs.gov/app/eos/>

Due to the lack of information contained in the non-current letter issued to the [REDACTED], USCIS conducted a search of the IRS web site for exempt organizations relating to the [REDACTED] and/or the petitioner. However, results of those searches did not produce any record related to the letter submitted by the petitioner or information about the petitioner's organization utilizing the EIN.

The initial and subsequent evidence submitted is insufficient to establish a tax-exempt organization exists or the existence of a religious organization that is recognized as tax-exempt under a group tax-exemption.

In response, the petitioner submitted a January 3, 2012 in which its administrative bishop, [REDACTED], confirmed that the "congregation in [REDACTED] Corona NY, is a registered congregation of the [REDACTED] . . . which is part of the [REDACTED] Cleveland TN denomination, and under the denomination's 501(c)(3) covering." The petitioner also submitted documentation from the State of New York reflecting that a [REDACTED] organization is an active corporation within the state.

The director denied the petition, finding that the petitioner had not provided a currently valid determination letter from the IRS establishing its group exemption. On appeal, the petitioner resubmits the 1972 letter from the IRS to the [REDACTED] and provides a February 15, 2013 letter from the [REDACTED], verifying that the petitioning organization is covered under the organization's group exemption granted by the IRS.

The AAO will withdraw the director's decision. A review of the IRS website, accessed on May 14, 2013, of which a copy of the pertinent section is incorporated into the record, indicates that the [REDACTED] in Cleveland has been granted a group exemption from the IRS. The explanation of the group code indicates that "subordinate units covered by the group exemption are also eligible to receive tax-deductible contributions, even though they are not separately listed." Accordingly,

the petitioner has submitted sufficient documentation to establish that the [REDACTED] has been issued a group tax-exemption by the IRS. The fact that the petitioning organization is not listed on the IRS website is not evidence that it is not covered under the group exemption granted to the [REDACTED]. The petitioner has submitted sufficient documentation to establish that it is a bona fide nonprofit religious organization.

Nonetheless, the petition may not be approved as the record now stands.

The petitioner has not established that how it will compensate the beneficiary. The U.S. Citizenship and Immigration Services (USCIS) 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 [Internal Revenue Service] documentation, such as IRS Form W-2 [Wage and Tax Statement] 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 indicated on the Form I-129, Petition for Nonimmigrant Worker, that the beneficiary would receive a salary of \$29,180 in addition to receiving housing, food, and transportation. The petitioner stated that it had annual gross income of \$688,983 and net annual income of \$658,857. On the Form I-129 Supplement R, the petitioner valued the housing at \$9,180 and stated that the beneficiary would receive utilities worth \$20,000 and total cash of \$29,180. In its August 10, 2012 letter, the petitioner stated that the beneficiary would receive housing on church premises valued at \$12,000 per year, food from the church kitchen valued at \$5,180 and cash valued at \$12,000 per year. The petitioner has therefore provided inconsistent information regarding the nature of the beneficiary's proposed compensation. Additionally, the petitioner submitted no documentation of the non-salaried compensation that it stated it would provide to the beneficiary. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The petitioner submitted copies of its unaudited financial statements for 2010 and 2011, accompanied by an accountant's compilation report. As the compilation is based primarily on the representations of management, the accountant expressed no opinion as to whether they fairly present the financial position of the petitioning organization. In light of this, limited reliance can be placed on the validity of the facts presented in the financial statements that have been submitted. No further supporting documentation is included in the record to support the assertions made by the accountant in the financial documentation, or contained within the unaudited financial statements. Of particular note, however, is that the petitioner reports current liabilities in excess of current assets. However, the accountant reports that the petitioner "maintains cash balances at financial institutions in excess of FDIC insurance limits" of \$250,000. Furthermore, the petitioner indicates it has net annual income of \$658,857, the same amount that it claimed was its "functional expenses" for 2011.

The matter is remanded to the director to inquire into whether the petitioner has submitted verifiable documentation to establish how it will compensate the beneficiary.

Additionally, the record does not reflect that the petitioner has successfully completed a compliance review or onsite inspection. The regulation at 8 C.F.R. § 214.2(r)(16) provides:

*Inspections, evaluations, verifications, and compliance reviews.* The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, or satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

On remand, the director should determine whether a compliance review, onsite inspection, or other verification of the petitioner's claims is appropriate in the instant petition.

The matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.