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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

[REDACTED]

D13

Date: **AUG 14 2012** Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 Jewish synagogue. It seeks to extend the beneficiary's status as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as a "scholar/outreach worker." 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 asserts that the "issuance of the visa to the beneficiary for employment by [REDACTED] grants authorization by any entity under the umbrella of the annotated organization to employ and remunerate the beneficiary." The petitioner submits no additional documentation in support of the appeal. The beneficiary submits a letter and copies of his pay stubs.

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.

On the Form I-129, Petition for a Nonimmigrant Worker, filed on April 1, 2011, the petitioner listed its federal employer identification number (EIN) as [REDACTED] With the petition, the petitioner provided a copy of a March 21, 2007 letter from the IRS, addressed to [REDACTED] at [REDACTED] EIN [REDACTED] The letter stated that the IRS had issued the organization a determination letter in September 1986

granting it tax-exempt status as a church under sections 509(a)(1) and 170(b)(1(A)(i) of the IRC. The letter does not indicate that the organization was granted a group exemption applicable to its subordinate units.

In an October 4, 2010 letter, submitted in support of the petition, stated:

From 1957 to September, 2000 the Congregation held services and operated out of the home of its founding rabbi, In September, 2000, the Congregation moved to a separate Synagogue facility located at The Congregation offers virtually all of its activities at, however, it maintains two mailing addresses, one at and the other at its original location,

The petitioner submitted a copy of the 1986 articles of incorporation for and a copy of a mortgage on the property on indicating the owner as In response to a June 2, 2011 request for evidence (RFE), the petitioner submitted a copy of the beneficiary's IRS Form W-2 for 2010, which indicated that, EIN, paid the beneficiary \$26,000 in wages. The petitioner also provided a copy of IRS Form 941, Employer's Quarterly Federal Tax Return, and PA Form UC-2A, Employer's Quarterly Report of Wages Paid to Each Employee, for the quarters ending September 2010 and March 2011. The tax forms indicate that they were filed by. The IRS Forms 941 indicate the organization's EIN as

In an August 4, 2011 notice of intent to deny (NOID) the petition, the director advised the petitioner that the March 21, 2007 IRS letter, the Form I-129 petition, and the beneficiary's IRS Form W-2, each had different EINs and that the petitioner had provided no evidence of a group exemption granted to the petitioner or any other organization. The director instructed the petitioner to provide evidence that it qualifies as a nonprofit religious organization exempt from federal taxation under section 501(c)(3) of the IRC.

In his letter accompanying the petitioner's response, counsel stated:

The Petitioner's supporting letter in your record explains that the organization was founded at and is now housed at and maintains an office at the location. . . .

Addressing the issue of employment during the current approved R-1 period by affiliates of we note that applied for an IRS Group Determination Letter . . . and has requested a copy of the approval from the IRS. Unfortunately it has not arrived in time for this response.

Counsel also stated:

Because the beneficiary's [previously approved] visa was issued prior to the enactment of the Regulations [in November 2008], a tax-exempt determination letter was not submitted to the Embassy in connection with the issuance of the beneficiary's R-1 visa. Consequently, no Federal EIN was associated with the beneficiary's visa as would be the case today on a Form I-129 petition. The beneficiary's visa is annotated with the name of the employer ' [REDACTED]'. The application and issuance of the beneficiary's visa and R-1 status is maintained without assignment to an entity's EIN.

[REDACTED] was founded by [REDACTED] and maintains multiple programs and formal or informal efforts to carryout [sic] its religious mission, all operating under the umbrella of the principal congregation. . . . Many donors and grant funders seek to earmark contributions to specific religious programs and functions of the Congregation and seek accounting of use of their donations on a regular basis. Therefore, [REDACTED] maintains multiple funds and entities each for a specific religious purpose and part of the Congregation's mission.

The issuance of the visa to the beneficiary for employment by ' [REDACTED] grants authorization by any entity under the umbrella of the annotated organization to employ and remunerate the beneficiary. Related programs and entities established to carryout [sic] the same religious mission operating under the same name and umbrella of the principal organization are, under pre-Regulation visa issuance and entry, the same, for purposes of religious worker status. Counsel concedes that under the petition process enacted by the Regulations, the beneficiary could be employed only by the petitioning entity and the Regulations adopted the petition process to specifically define and limit the employer of a religious worker beneficiary. Because the Beneficiary was issued a visa prior to the enactment of the Regulations and entered the US with this visa employment by the entities directly associated with and carrying the religious mission under the name of Congregation Beth Solomon are considered legal employment. Even if this were arguably not the case, employment by [REDACTED] and remuneration by a related entity does not disqualify this application since the beneficiary's situation would be analogous to a religious worker employed by [REDACTED] and having provided his own support as deemed acceptable under Regulation §204.5(m)(11)(iii).

The petitioner resubmitted the articles of incorporation for [REDACTED] and a copy of the organization's January 2011 Pennsylvania Department of State Corporation Bureau Decennial Report of Association Continued Existence. The petitioner also submitted a copy of the

2000 articles of incorporation for [REDACTED] and the January 2011 Decennial Report of Association Continued Existence filed with the State of Pennsylvania Department of State. The petitioner also submitted a copy of an April 17, 2007 letter from the [REDACTED] to the IRS "requesting a group exemption letter for the following affiliates of our organization." The letter does not include the list of affiliates and the letter is not accompanied by an attachment listing the affiliate organizations. The petitioner also provided a copy of an April 27, 2007 letter from the IRS acknowledging receipt of the petitioner's request for a group ruling, and advising the petitioner that if it did not hear from the IRS in 120 days, to call the toll free number. Both letters reference the [REDACTED] EIN. The petitioner submitted no documentation to indicate that it had followed up on its request to the IRS.

The director denied the petition, finding that the petitioner had failed to submit an IRS determination letter that would establish it is a bona fide nonprofit religious organization exempt from income tax under section 501(c)(3) of the IRC.

Counsel submits no brief or additional documentation on appeal, stating that the "basis of the Appeal is contained in the statements and arguments in the record." Counsel specifically renews his argument regarding the petitioner's multiple programs and that the beneficiary's visa approval permits him to work for any entity operated "under the umbrella" of the petitioning organization.

Counsel's argument is not persuasive. The separate articles of incorporation and the three different EINs indicate that [REDACTED] has established separate corporate identities for its various entities and therefore they are legally distinct from their parent organization. The petitioner submits no documentation to establish that [REDACTED] has received a group exemption from the IRS that is applicable to its subordinate units. The petitioner is one of the subordinate units of [REDACTED] and it has not established that it is a bona fide nonprofit religious organization, either by submission of a determination letter from the IRS or under a group exemption granted to its parent organization.

Counsel's assertion that the beneficiary's visa authorizes him to work and be compensated by any entity under the umbrella of the petitioning organization is erroneous. Such an arrangement would negate the requirements of the regulation that requires a petitioner to establish that the beneficiary seeks to enter the United States to work for the petitioning organization and to establish that it can compensate the beneficiary of a specific petition. *See* 8 C.F.R. § 214.2(r)(1)(iv) and 8 C.F.R. § 214.2(r)(11).

Counsel asserts that the "employment by [REDACTED] and remuneration by a related entity does not disqualify this application since the beneficiary's situation would be analogous to a religious worker employed by [REDACTED] and having provided his own support as deemed acceptable under Regulation §204.5(m)(11)(iii)."¹ Counsel's assertion is without merit. The regulation at 8 C.F.R. § 214.2(r)(11) sets forth specific

¹ Counsel erroneously cites to the immigrant religious worker regulation at 8 C.F.R. §204.5(m) rather than the nonimmigrant religious worker regulation at 8 C.F.R. § 214.2(r)(11).

requirements that must be met in order for a beneficiary to be considered self-supporting and does not suggest that “analogous” situations may also be considered. Employment by one entity while working for the other is not one of the items listed in the regulation.

As the petitioner has failed to submit a currently valid determination letter from the IRS establishing that it is a tax-exempt organization and failed to submit a currently valid determination letter from the IRS establishing that it is covered under a group tax-exemption, it has failed to establish that it is a bona fide nonprofit religious organization exempt as defined by the regulation.

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.