



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

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 26423224

Date: APR. 06, 2023

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (Religious Worker – R-1)

The Petitioner, a church, seeks to classify the Beneficiary as a nonimmigrant religious worker to perform services as an assistant worship minister. Immigration and Nationality Act (the Act) section 101(a)(15)(R), 8 U.S.C. § 1101(a)(15)(R). This nonimmigrant classification allows non-profit religious organizations, or their affiliates, to temporarily employ foreign nationals as ministers, in religious vocations, or in other religious occupations in the United States.

The Director of the California Service Center denied the petition, concluding that the record did not establish that the Petitioner is a bona fide non-profit religious organization. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Non-profit religious organizations may petition for noncitizens to work in the United States for up to five years solely to perform religious work for an average of at least 20 hours per week as ministers, in religious vocations, or in religious occupations. The petitioning organization must establish, among other requirements, that the noncitizen has been a member of a religious denomination for at least the two-year period before the date the petition is filed. *See generally* section 101(a)(15)(R) of the Act; 8 C.F.R. § 214.2(r).

In order to qualify as a bona fide non-profit religious organization, petitioners must show that they are a religious organization exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986, and that they possess a currently valid determination letter from the Internal Revenue Service (IRS) confirming this exemption. 8 C.F.R. §§ 214.2(r)(3), (9).

II. ANALYSIS

The sole issue for discussion on appeal is whether the Petitioner qualifies as a bona fide non-profit religious organization. As explained above, the pertinent regulations state that in order for a petitioner to meet this requirement, it must possess a currently valid determination letter from the IRS which confirms that the organization is tax-exempt.

In her decision, the Director indicated that in response to her request for evidence, the petitioner stated that it had never applied for a determination letter from the IRS since churches are not required to do so. However, the Director noted that although the IRS does not require churches to apply for a determination letter, United States Citizenship and Immigration Services (USCIS) regulations do include such a requirement for religious organizations seeking to employ religious workers. Because the Petitioner did not submit a determination letter from the IRS, the Director concluded that it did not qualify as a bona fide, non-profit religious organization.

On appeal, the Petitioner argues that aside from filing Form 1023 with the IRS, it has provided USCIS with all of the information that the IRS requires to be submitted in an application for a determination letter. It asserts that to deny its petition solely on this ground is to suggest that the IRS should also deny issuance of its determination letter. However, only the IRS can verify the petitioner's tax-exempt status by issuing a determination letter; USCIS lacks both the expertise and the authority to decide whether the Petitioner is fully compliant with section 501(c)(3) of the Internal Revenue Code and related statutes and regulations. The regulation at 8 C.F.R. § 214.2(r)(9)(i) requires the submission of a currently valid determination letter from the IRS, and the Petitioner has not submitted this required evidence.

The Petitioner also states that it has since filed an application for a determination letter with the IRS, and includes copies of the completed form and fee receipt dated January 17, 2023. However, eligibility for an immigration benefit must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). Further, the filing of an application for a determination letter would not satisfy the requirement of possessing a valid determination letter at the time of filing.

III. CONCLUSION

The Petitioner did not submit a currently valid determination letter from IRS showing that it is a tax-exempt organization, and it therefore does not qualify as a bona fide non-profit religious organization. The petition will remain denied.

ORDER: The appeal is dismissed.