



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

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

In Re: 24188127

Date: JAN. 19, 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 a Hispanic ministries pastor. 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 nonprofit religious organization and how it would compensate the Beneficiary. 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).

To show that it qualifies as a bona fide non-profit religious organization, a petitioner must submit a currently valid determination letter from the IRS showing that it is either a tax-exempt organization or that the group under which it is recognized is tax-exempt. Alternatively, a bona fide organization which is affiliated with the religious denomination must submit a currently valid determination letter from the IRS showing its tax-exempt status as well as evidence of its religious nature and purpose. 8 C.F.R. §§ 214.2(r)(3), (9).

A petitioner must also show how it intends to compensate the noncitizen, including specific salaried or non-salaried compensation. This may include evidence of past compensation for similar positions, budgets showing money set aside, verifiable documentation that room and board will be provided, or other acceptable evidence. IRS documentation must be submitted, or its unavailability explained and comparable, verifiable documentation submitted. 8 C.F.R. § 214.2(r)(11).

If the noncitizen is a minister, the petitioner must submit their certificate of ordination or similar documents reflecting acceptance of their qualifications as a minister, as well as evidence that the noncitizen has completed any course of prescribed theological education, including transcripts and evidence of accreditation of the theological education by the denomination. If the denomination does not require a prescribed theological education the petitioner must submit evidence of:

- The denomination's requirements for ordination to minister;
- The duties allowed to be performed by virtue of ordination;
- The denomination's levels of ordination, if any; and
- The noncitizen's completion of denomination's requirements for ordination.

8 C.F.R. § 214.2(r)(10).

II. ANALYSIS

A. Bona Fide Non-Profit Religious Organization

In his decision, the Director noted that although it had submitted a letter from the Evangelical Presbyterian Church (EPC) stating that it was "a subordinate of" that organization and thus under a group tax-exemption, the Petitioner did not submit a determination letter from the IRS as required. On appeal, the Petitioner now submits an IRS determination letter for EPC dated March 28, 2017. Where, as here, a Petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). In addition, we note that even if we were to consider EPC's IRS determination letter on appeal, it does not indicate that EPC was granted a group tax exemption or reference the group exemption number given in the letter from EPC. We therefore agree with the Director that the Petitioner has not established that it is a bona fide non-profit religious organization.

B. Compensation

The Petitioner indicated on the Form I-129 R Supplement that it would compensate the Beneficiary with a \$40,000 annual salary and health insurance for \$6,480 per year. In responding to the Director's request for evidence (RFE), it added that a home and automobile would also be provided, but that a lease for the home would be arranged once the Beneficiary arrived in the United States. The Petitioner also included a copy of a balance sheet in its response, which included a line item showing approximately \$43,200 set aside for the "[redacted] Hispanic Ministries Fund."

JAN. 19, 2023As the Director noted, the balance sheet does not include any identifying information about the organization holding the listed assets. More importantly, it does not establish how the

Petitioner would compensate the Beneficiary, as the amount set aside for the Hispanic ministry is insufficient to pay the stated salary and health insurance benefit, let alone the unspecified housing and car compensation offered to him, and no explanation of the source of additional funding to cover this gap was provided.

While the Petitioner states on appeal that it is submitting additional evidence of how it will compensate the Beneficiary, this evidence does not appear in the record. Further, even if that evidence had been submitted, we will not consider evidence offered on appeal where a petitioner has been provided notice of deficiencies in the record and an opportunity to respond. *Id.* The Director's RFE stated the deficiencies in the record relating to the Beneficiary's compensation and provided a list of evidence that the Petitioner could provide to resolve them. Accordingly, we agree that the Petitioner has not established how it will compensate the Beneficiary.

III. CONCLUSION

The Petitioner has not established that it qualifies as a bona fide non-profit religious organization, or how it will compensate the Beneficiary.¹ The petition will remain denied.

ORDER: The appeal is dismissed.

¹ While not addressed by the Director in her decision, the evidence also does not establish that the Beneficiary is ordained as a minister or otherwise meets the denomination's requirements for ordination. The letter from the National Presbyterian Church of [] states that the Beneficiary is an ordained pastor, but the record does not include an ordination certificate or evidence of his completion of prescribed theological education. In addition, the English translation of this letter is not properly certified per the requirements of 8 C.F.R. § 103.2(b)(3). These deficiencies would need to be addressed in any further proceedings in this matter.