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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street N.W.
Washington, D.C. 20536



File  Office: CALIFORNIA SERVICE CENTER

Date: NOV 24 2003

IN RE: Petitioner: 
Beneficiary: 

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director of the California Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a minister who seeks classification as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), in order to serve Inter-City Baptist Church as a pastor of church planting. The director determined that the petitioner had not established that Inter-City Baptist Church qualifies as a bona fide nonprofit religious organization.

On appeal, the petitioner submits a statement and additional documentation.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101 (a)(27)(C), which pertains to an immigrant who:

(i) for at least 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;

(ii) seeks to enter the United States--

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

(II) before October 1, 2008, 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) before October 1, 2008, 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; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

Pursuant to 8 C.F.R. § 204.5(m) (1):

Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or 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. All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

The issue raised by the director is whether the petitioner has established that his employer, the Inter-City Baptist Church, is a bona fide nonprofit religious organization.

Pursuant to 8 C.F.R. § 204.5(m) (3), each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations; or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3).

In this case, the petitioner has declined to provide a document from the Internal Revenue Service (IRS) recognizing Inter-City Baptist Church as a bona fide nonprofit religious organization. Therefore, the petitioner has not shown that Inter-City Baptist Church qualifies as a bona fide nonprofit religious organization pursuant to 8 C.F.R. § 204.5(m) (3) (i) (A).

In order to qualify as a bona fide nonprofit religious organization pursuant to 8 C.F.R. § 204.5(m)(3)(i)(B), the petitioner must provide the documentation that is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code (IRC) as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, Application for Recognition of Exemption Under section 501(c)(3) of the IRC, the Schedule A supplement that applies to churches, and a copy of the organizing instrument of the church that contains a statement of purpose and a proper dissolution clause.

The petitioner has provided a copy of the church's Articles of Incorporation including its statement of purpose and dissolution clause, but he has not provided Form 1023 and the Schedule A supplement that pertains to churches. On appeal, the petitioner states:

As a matter of conscience and religious freedom, Inter-City Baptist Church has exercised its legal rights to not seek formal IRS recognition of its tax-exempt status. Nevertheless, it is clearly eligible for such status - and that is all that 8 C.F.R. requires: a demonstration of eligibility (based on the IRS guidelines for eligibility).

The petitioner asserts that Inter-City Baptist Church qualifies as a bona fide nonprofit religious organization because it is a church, and as such meets the IRS guidelines for exemption from federal income tax under section 501(c)(3) of the IRC as it pertains to religious organizations. The petitioner contends that there is no requirement in the regulation at 8 C.F.R. § 204.5(m)(3)(i) that churches submit Form 1023 and Schedule A to demonstrate such eligibility.

In support of his assertion that Inter-City Baptist Church qualifies as a bona fide nonprofit religious organization, the petitioner has submitted the following documents:

1. 2002 Nonprofit Corporation Information Update Form submitted by Inter-City Baptist Church to the Michigan Department of Consumer & Industry Services, Bureau of Commercial Services, Corporation Division;
2. A letter from the IRS dated September 24, 2001, recognizing Inter-City Baptist Church, Taxpayer Identification Number 38-1679460, as a "Church Exempt from Social Security Taxes," effective January 1, 1962;
3. Michigan Sales and Use Tax Certificate of Exemption dated June 15, 1999, recognizing Inter-City Baptist

Church as a church exempt from Michigan sales and use tax; and

4. A letter dated August 19, 2003, from the IRS regarding the tax exempt status of Inter-City Baptist Church.

The documents from the State of Michigan relate only to the church's tax exempt status in that state, and do not demonstrate that Inter-City Baptist is a bona fide nonprofit religious organization as described in section 501(c)(3) of the IRC as it applies to religious organizations.

The letter from the IRS recognizing Inter-City Baptist Church as a church that is exempt from social security taxes is not sufficient to demonstrate that the church is a bona fide nonprofit religious organization. This document does not specify that the church is exempt from federal income tax as a religious organization as described in section 501(c)(3) of the IRC.

The IRS stated in another letter dated August 19, 2003:

For federal income tax purposes only, churches, their integrated auxiliaries, and conventions or associations of churches are treated as organizations described in section 501(c)(3) of the Internal Revenue Code of 1986, without applying for formal recognition of such status. To qualify for this treatment, an organization must meet all the organizational and operational requirements of section 501(c)(3) of the Code.

It is noted that the following statement also appears in the letter:

In order to be formally recognized by the Internal Revenue Service as being tax exempt, an organization must apply for exemption. We have no record of your organization being recognized as exempt from federal income tax under section 501(c)(3) of the Code as a church.

The petitioner is not required to actually file IRS Form 1023 and Schedule A with the IRS in order to establish that it is a bona fide nonprofit religious organization. However, under 8 C.F.R. § 204.5(m)(3)(i)(B), the petitioner may demonstrate its eligibility by submitting such documents for review and incorporation into the record of proceeding. Since this has not been done, the petitioner has not shown that it is a bona fide nonprofit religious organization, and the petition must be denied.

Beyond the decision of the director, the petitioner has not shown that he was engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding

the filing date of the petition. Since the petition was filed on October 4, 2002, the petitioner must establish that he was engaged continuously as a pastor from October 4, 2000 to October 4, 2002.

The petitioner explains that he was requested by Inter-City Baptist Church to consider church planting opportunities in the United States in April of 2000. The petitioner states that when an opportunity to plant a new church in Mesa, Arizona, presented itself in May of 2000, he resigned his pastoral position at a Baptist church in Canada, sold his house, cashed in his retirement funds, and spent the period from October 2000 to October 2001 preparing the "Arizona Church Planting Project" for approval by the congregation of Inter-City Baptist Church. Pearson Johnson, Pastor of Missions and Evangelism for Inter-City Baptist Church, stated in a letter submitted in response to the director's request for additional evidence:

[The petitioner] spent the first of the two years, October 2000 to October 2001, actively organizing and promoting the proposed project. He also remained as active in our local church ministry as time and opportunity would permit. This period was essentially a one-year "sabbatical" in the midst of a continuous nine years in full-time pastoral ministry. (He was very fortunate as many ministers spend more than three years in this "deputation" period.) He then relocated to Arizona and spent the second of the two years as senior minister in our "daughter" church in Mesa.

The record contains evidence to demonstrate that the petitioner served Inter-City Baptist Church as a full-time, salaried pastor of the "daughter" church in Mesa, Arizona, during the period from October 2001 to October 2002. Nevertheless, since the petitioner was not a full-time pastor during the period from October 2000 to October 2001, he has not established that he was solely and continuously working as a pastor for two full years immediately preceding the filing date of the petition.

The AAO notes that the dismissal of this appeal does not preclude the petitioner from filing a new special immigrant religious worker petition with all supporting documentation, including that required under 8 C.F.R. § 204.5(m)(3)(i).

In visa petition proceedings, the burden of proof remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. In accordance with 8 C.F.R. § 103.3(a)(1)(v), the appeal will be dismissed.

ORDER: The appeal is dismissed.