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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



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

[Redacted]

FILE: [Redacted] Office: [Redacted] Date: **JUL 12 2004**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant 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 of the Administrative Appeals Office 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.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a Buddhist meditation center. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as a monk. The director determined that the petitioner had not established that it qualifies as a tax-exempt religious organization, or that it is able to pay the beneficiary's salary.

On appeal, the petitioner argues that the director ignored critical evidence in the record.

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 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).

The regulation at 8 C.F.R. § 204.5(m)(2) defines a "bona fide nonprofit religious organization in the United States" as an organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations, or one that has never sought such exemption but establishes to the satisfaction of the Service that it would be eligible therefor if it had applied for tax exempt status.

8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit 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 (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The director noted that, according to documentation from the Internal Revenue Service, the petitioner's tax-exempt status derives from classification not under section 170(b)(1)(A)(i) of the Internal Revenue Code of 1986 (IRC), which pertains to churches, but rather under section 170(b)(1)(A)(vi) of the IRC. The director denied the petition, stating "[t]his section is not the one relating to religious organizations. . . . Therefore, the petitioner is not tax-exempt as a religious organization and is ineligible for special immigrant classification on any alien employees."

Section 170(b)(1)(A)(vi) of the IRC refers both to religious organizations and to many types of secular organizations as well. The burden of proof is on the petitioner to establish that its classification under section 170(b)(1)(A)(vi) of the IRC derives primarily from its religious character, rather than from its status as a publicly supported charitable and/or educational institution. The organization can establish this by submitting documentation which establishes the religious nature and purpose of the organization, such as brochures or other literature describing the religious purpose and nature of the activities of the organization. In this instance, the petitioner has submitted ample documentation showing that the petitioner's principal (indeed, sole) purpose is religious in nature.

The above is sufficient grounds for rejecting the director's conclusion regarding the petitioner's tax exemption. Further review of the record, moreover, renders the discussion moot. As the petitioner observes on appeal, the Internal Revenue Service reclassified the petitioner as a church, as described at section 170(b)(1)(A)(i) of the IRC, on August 9, 1999, retroactive to the entity's incorporation in 1991.

The petitioner asserts that the petitioner had previously submitted this evidence, but that the director had ignored it. We are, however, unable to find this letter among the petitioner's previous submissions. It remains that (1) the director relied on an improper standard and (2) the petitioner has now established unequivocally that it is tax-exempt as a church.

The remaining ground of appeal, discussed only briefly in the director's decision, concerns the petitioner's ability to pay the beneficiary's salary. The petitioner, however, has clearly stated that the beneficiary will receive no salary. As a monk, he will receive only housing and subsistence support from the petitioning entity. Also, prior to denying the petition, the director had offered no indication that the petitioner's documentation was deficient in this area.

We find that the two stated grounds for denial rest on flawed premises, and therefore cannot stand as valid grounds for denial. Because the director has raised no valid basis for denial, and our review of the record does not readily yield any further grounds for denial, we must withdraw the director's decision.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The petition is approved.