U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JUL 12 2004

IN RE: Petitioner: [redacted]
Beneficiary:

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, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska 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 Christian campus mission organization. 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 an academic/theological religious press specialist at the petitioner's InterVarsity Press Division. The director determined that the petitioner is not a qualifying tax-exempt religious organization.

8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit 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.

According to documentation from the Internal Revenue Service (IRS), the petitioner's tax-exempt status derives from classification not under section 170(b)(1)(A)(i) of the Internal Revenue Code of 1986 (the IRC), which pertains to churches, but rather under section 509(a)(2) of the IRC.

On appeal, the petitioner notes that the IRS distinguishes between "churches" and "religious organizations" (*See*, for example, IRS Publication 1828, *Tax Guide for Churches and Religious Organizations*).

The burden of proof is on the petitioner to establish that its tax-exempt classification derives primarily from its religious character. 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 to establish the overwhelmingly religious nature of the petitioning entity; it exists not for educational, charitable, scientific, or other reasons, but to promote and inculcate specific religious beliefs.

The director, prior to denying the petition, made no effort to ascertain whether the petitioner's federal tax exemption derives from its religious character. The director simply denied the petition because the Internal Revenue Service classified the petitioner under a section of the IRC other than section 170(b)(1)(A)(i). This finding, the sole stated ground for denial, relies upon an impermissibly restrictive reading of the regulations. Upon review of the record, we are satisfied that the petitioner has demonstrated that its tax-exempt status derives primarily from its religious character.

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.