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U.S. Citizenship  
and Immigration  
Services



CI

FILE: [Redacted] Office: TEXAS SERVICE CENTER

Date: JUN 21 2004

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

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:



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.

*for Myra L. [Signature]*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner filed the Form I-360, Petition for Amerasian, Widow or Special Immigrant, on June 25, 2002. The petitioner seeks classification of the beneficiary 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 perform services as a bible teacher, Sunday school teacher, chanter, and choir leader, at an annual salary of \$14,000.

The director denied the petition in a decision dated May 21, 2003. The director determined that the petitioner had not established that it qualifies as a bona fide non-profit religious organization for the purposes of special immigrant classification.

Counsel for the petitioner filed a Form I-290B, Notice of Appeal, on June 12, 2003. On appeal, counsel asserts that the petitioner is a subordinate member of Full Gospel World Missions, Inc., an organization that is recognized by the Internal Revenue Service (IRS) as tax-exempt under section 501(c)(3) of the Internal Revenue Code (IRC).

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

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).

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part:

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.

The petitioner in this matter is described as a church. In a letter dated May 3, 2003, the petitioner's pastor, [REDACTED] states that the church has two salaried employees (including the beneficiary and a "small group disciple" trainer), and two volunteers (a "children's teacher" and "pianist"). However, in a letter dated May 9, 2003, counsel for the petitioner indicates that the church's two salaried employees are the pastor and the beneficiary. Counsel also indicates that the average number of persons attending church services is 112.

The record reflects that the beneficiary is a native and citizen of Korea who was last admitted to the United States as a nonimmigrant visitor for business (B-1) on September 24, 1999, with authorization to remain until October 10, 1999. On April 10, 2000, the beneficiary applied for a change of his nonimmigrant status from that of a nonimmigrant visitor to that of a nonimmigrant religious worker (R-1). His application was approved on April 17, 2000, and he was granted permission to remain in the United States as an R-1 nonimmigrant until April 4, 2004. The Form I-360 indicates that the beneficiary has not been employed in the United States without Citizenship and Immigration Services (CIS) permission.

The sole issue raised by the director to be addressed in this proceeding is whether the petitioner has established that it qualifies as a bona fide non-profit religious organization.

The regulation at 8 C.F.R. 204.5(m)(3)(i) states, in pertinent part:

(3) *Initial evidence.* Unless otherwise specified, 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 (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 organization....

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the IRS is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a

petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the IRC of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement to Form 1023 which applies to churches, and a copy of the organizing instrument of the church which contains a proper dissolution clause and which specifies the purposes of the organization.

Upon submission of the initial petition and in response to the director's Notice of Intent to Deny the petition, dated April 10, 2003, the petitioner submitted the following documentation to establish that the petitioner is a bona fide non-profit religious organization:

- A photocopy of a letter from the IRS, dated March 29, 1995, recognizing [REDACTED] as tax-exempt under section 501(c)(3), as an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the IRC. Section 170(b)(1)(A)(vi) of the IRC relates to "publicly supported foundations," not "religious organizations."
- A photocopy of a letter from the IRS, dated June 1986, recognizing the Korean District of the Assemblies of God, [REDACTED] California, and its subordinates, as tax-exempt under section 501(c)(3), as an organization described in sections 509(a)(1) and 170(b)(1)(A)(i) of the IRC.
- A one-sheet page, typed in Korean and English, with a hand-written notation at the top indicating that it is a "church listing." The document includes a church, at the same address as the petitioner's, named [REDACTED]. The source of the listing is not indicated on the document.
- A photocopy of the petitioner's "Articles of Incorporation," dated June 11, 1998.
- A photocopy of a letter from the president and vice-president of the North American Council of the [REDACTED] California, dated March 8, 2003, stating that the petitioner belongs to that association.

In support of the appeal, counsel submits the following additional documentation to establish that the petitioner qualifies as a bona fide non-profit religious organization:

- A photocopy of a "Certificate of Amendment of Articles of Incorporation," dated February 12, 1996, indicating that [REDACTED], changed its name to Assemblies of [REDACTED].
- A photocopy of a "Certificate of Membership," dated June 12, 1998, from the general secretary of [REDACTED], indicating that the petitioner is a member of that organization.
- A photocopy of the State of California's "Statement by [REDACTED] from [REDACTED] located at [REDACTED] California. The statement was signed on May 13, 1999, but does not have a stamp indicating that it was ever filed.

- A photocopy of a letter from the IRS, dated May 2, 2002, indicating that [REDACTED] and its subordinates, were recognized (in June 1986) as exempt from federal income tax under section 501(c)(3) because they are organizations of the type described in sections 509(a)(1) and 170(b)(1)(A)(i) of the IRC. The address of [REDACTED] is noted as [REDACTED] California.

There are multiple discrepancies in the evidence submitted to establish the petitioner's status as a bona fide non-profit religious organization. These discrepancies call into question the petitioner's ability to document the requirements under the statute and regulations and have not been satisfactorily explained.

First, the record contains a letter, dated March 29, 1995, from the IRS recognizing [REDACTED] as tax exempt as a "publicly supported foundation" (under sections 509(a)(1) and 170(b)(1)(A)(vi) of the IRC) and not as a religious organization. However, a second letter from the IRS, dated May 2, 2002, indicates that [REDACTED] and its subordinates, were recognized in June 1986 as exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (under sections 509(a)(1) and 170(b)(1)(A)(i) of the IRC). Furthermore, the record also contains a "Certificate of Amendment of Articles of Incorporation" indicating that [REDACTED] changed its name to Assemblies of [REDACTED] February 1996.

Although the record contains a letter from the IRS recognizing the [REDACTED] and its subordinates, as tax-exempt religious organizations, there is no evidence contained in the record that the petitioner is a subordinate of that organization. Furthermore, the petitioner states, and has provided corroborating evidence to establish, that it is a member of [REDACTED] not a member of the Korean District of the Assemblies of God. Finally, the petitioner has not submitted an official listing of the subordinate membership of [REDACTED], or the [REDACTED]. The "church listing" including the [REDACTED] does not establish the petitioner's association with either umbrella organization.

Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

Based on the discrepancies encountered in the evidence submitted, it is concluded that the petitioner has not established that it qualified as a bona-fide non-profit religious organization as of the date the petition was filed. For this reason, the petition must be denied. As noted above, the regulations require that the petitioner demonstrate 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*. Furthermore, the petitioner must demonstrate that it maintained the appropriate tax-exempt recognition as of the date of filing the petition. *See Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971).

Beyond the decision of the director, a review of the record reflects that the petitioner has not submitted sufficient evidence to establish that: (1) the petitioner has had the ability to pay the beneficiary the proffered wage as of the date of filing the petition and continuing until the beneficiary obtains lawful permanent residence; (2) the proposed position qualifies as a religious vocation or occupation; (3) the beneficiary is qualified to engage in a

religious vocation or occupation; and, (4) the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for two years immediately preceding the filing date of the petition. Since the appeal will be dismissed for the reason discussed, these issues need not be examined further.

In reviewing an immigrant visa petition, CIS must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the beneficiary in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of B. Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.