



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: NOV 10 2004

IN RE:

Petitioner:

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:

[Redacted]

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.

Maui Johnson

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

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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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 dismissed.

The petitioner is a Zoroastrian 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 (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a priest. The director determined that the petitioner had not established its qualifying tax-exempt status.

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 . . . ; 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).

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.

With the initial filing of the petition, the petitioner submitted a copy of a determination letter from the Internal Revenue Service (IRS), indicating that 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 Code), which pertains to churches, but rather under section 170(b)(1)(A)(vi) of the Code, which pertains to publicly-supported organizations as described in section 170(c)(2) of the Code, "organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes," or for other specified purposes. This section refers in part to religious organizations, but to many types of secular organization as well. An organization classified under section 170(b)(1)(A)(vi) of the Code can be either religious or non-religious. The burden of proof is on the petitioner to establish that its classification under section 170(b)(1)(A)(vi) of the Code derives primarily from its religious character, rather than from its status as a publicly supported charitable and/or educational institution.

Because the above letter did not establish that the petitioner's exemption derives from its religious character, the director issued a notice, stating, in part:

Provide evidence that the U.S. religious organization qualifies as a nonprofit religious organization in the form of either:

- (a) The Internal Revenue Service – IRS 501(c)(3) Tax Exempt Certification; **or**
- (b) Such documentation as is required by the Internal Revenue Service to establish eligibility under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

If you choose option (b) the documentation should include, at a minimum, a completed Form IRS 1023, the Schedule A supplement that applies to churches, and a copy of the organizing instrument of the church that contains a proper dissolution clause and that specifies the purpose of the organization.

The petitioner's response to this notice did not include the requested documents, nor did the petitioner submit anything else from the IRS to demonstrate that the IRS classified the petitioner under section 170(b)(1)(A)(vi) of the Code primarily due to religious factors.

The director denied the petition, stating that the petitioner had failed to establish that its tax-exempt status derives mainly from its religious nature. The director also asserted that organizations classified under section 170(b)(1)(A)(vi) of the Code cannot qualify as religious organizations. The record does not contain a copy of the IRS letter referenced by the director.

On appeal, the petitioner states, "we need a little time to get the documents itemized in the decision." The director had already given the petitioner twelve weeks to assemble and submit those same documents (including Form 1023 which, by law, must be made available for public inspection). 8 C.F.R. § 103.2(b)(8) indicates that no extensions shall be granted beyond this twelve-week period.

In a subsequent submission, the petitioner submits a copy of its Form 990 Return of Organization Exempt from Income Tax for 2002, but the petitioner still has not submitted the Form 1023 that the director had repeatedly indicated was required. Any attempt to submit that document at this late date will not overcome the director's decision. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

The petitioner correctly argues, on appeal, that classification under section 170(b)(1)(A)(vi) of the Code is not inherently disqualifying. That being said, however, not every organization classified under section 170(b)(1)(A)(vi) of the Code is a religious organization. The petitioner still bears the burden of demonstrating that the IRS issued that classification due to the religious nature of the organization. *See Memorandum from William R. Yates, Associate Director of Operations, Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003). In order to meet this burden, the petitioner must submit IRS Form 1023 and the other applicable documents listed in the director's request for evidence. The petitioner has not submitted these documents or credibly demonstrated that the documentation is no longer available.

The petitioner has not submitted the documentation required under 8 C.F.R. § 204.5(m)(3)(i), even after being put on notice as to those requirements. Therefore, the petitioner has failed to meet a basic evidentiary requirement, and the petition cannot be approved.

Beyond the director's stated grounds for denial, another factor prevents the approval of the petition. The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the "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." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on September 24, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a Zoroastrian priest throughout the two years immediately prior to that date. Prior case law, addressing the meaning of "continuously," indicates that engaging in another occupation or vocation interrupts the continuity of religious work. See *Matter of B*, 3 I&N Dec. 162 (CO 1948).

The beneficiary resides in Ontario, Canada. An official of the Zoroastrian Society of Ontario indicates that the beneficiary "has been working on a voluntary basis since 1990." A letter in the record from an official of the LCBO, Toronto, Ontario, indicates that the beneficiary "is a permanent employee with the LCBO since August 20, 1990. Currently, [the beneficiary] is working 36.25 hours per week, earning \$25.18 per hour/\$47,464.00 per annum." The letter is dated June 6, 2003, and thus the beneficiary was working full-time for the LCBO throughout the 2000-2002 qualifying period. "LCBO" is short for "Liquor Control Board of Ontario." While the record contains no description of the beneficiary's duties for the LCBO, there is nothing to indicate that the LCBO has employed the beneficiary to work as a Zoroastrian priest.

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 not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.