



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **SEP 23 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:

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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center. Counsel filed a Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals of Decision of District Director and a motion to reopen and reconsider. Pursuant to 8 C.F.R. § 204.5(n)(2), jurisdiction for an appeal of the denial of an employment based visa petition lies with the Associate Commissioner of Examinations (the Administrative Appeals Office ((AAO)). The appeal will be dismissed.

The petitioner is a temple. 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 monk. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition. The director also determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization.

On appeal, the petitioner submits a brief and additional documentation.¹

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, that “[a]n alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section

¹ Although the record contains a G-28, Notice of Appearance as Attorney or Representative, indicating that Manlin M. Chee represents the petitioner, that practitioner surrendered her law license in 2004.

101(a)(27)(C) special immigrant religious worker. 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 regulation 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."

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) 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 May 2, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working in the religious occupation throughout the two-year period immediately preceding that date.

The petitioner submitted evidence that the beneficiary was ordained as a monk in 1993, at the age of 14, and served in the Novice Order. The beneficiary was ordained in the Monk Order in December 2000, at the age of 21. The record establishes that the beneficiary has been living, training, and performing the services of a monk since his ordination in 1993. The record sufficiently establishes that the beneficiary has been continuously employed in the religious vocation for two full years prior to the filing of the visa petition.

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 § 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 § 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 as a religious organization issued by the Internal Revenue Service (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 Internal Revenue Code (IRC) of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, if applicable, and a copy of the organizing instrument of the organization which contains a proper dissolution clause and which specifies the purposes of the organization.

With the petition, the petitioner submitted a copy of a letter from the IRS informing the petitioner of its employee identification number, and a certification issued by the Secretary of State for North Carolina that accompanied the petitioner's articles of incorporation filed with the state. The petitioner did not submit a copy of its articles of incorporation. In a request for evidence (RFE) dated March 24, 2003, the director instructed the petitioner to "[s]ubmit a copy of the IRS's 501(c)(3) certification for the petitioning organization including the IRC 170 sub-classification, and actual request for certification Form 1023 or evidence that the petitioning organization is under the umbrella of a [qualifying] parent organization."

In response, the petitioner submitted a letter from the North Carolina Department of Revenue assigning the petitioner exempt status for franchise and revenue purposes. The petitioner also submitted a copy of an amendment to its articles of incorporation, in which it changed its name, principal office address and the name of its president.

On appeal, the petitioner submitted a June 17, 2003 letter from the IRS, in which the petitioner was granted tax-exempt status under section 503(c)(3) of the IRC as an organization described in sections 509(a)(1) and 170(b)(1)(A)(i) of the IRC.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

We note that the IRS determination letter was not issued until two weeks after the director denied the petition. The appeal also includes documentation showing that the petitioner amended its articles of incorporation to include a qualifying dissolution clause (which the IRS requires for a qualifying tax exemption). The petitioner filed the amendment on January 29, 2003. Thus, as of the petition's filing date on May 2, 2002, the petitioner did not yet meet the requirements for classification as a qualifying tax-exempt organization. The petitioner only became eligible for exemption several months after the filing date. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to our legal and regulatory requirements. See *Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998).

For the above reasons, while the June 17, 2003 IRS determination letter and amended articles of incorporation can properly be considered in the context of a newly filed petition, we cannot consider it to establish eligibility in the current proceeding. The salient facts do not demonstrate that the petition could have been approved at the time of filing in May 2002.

The record reflects that the beneficiary entered the United States on June 5, 2001 on a B-1 nonimmigrant visitor's visa. The director stated it cannot be determined that the beneficiary's sole purpose for entering the United States was to work for the petitioning organization. The regulation does not require that the alien's initial entry into the United States to be solely for the purpose of performing work as a religious worker. "Entry," for purposes of this classification, would include any entry under the immigrant visa granted under this category or would include the alien's adjustment of status to the immigrant visa. We withdraw this statement by the director.

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.

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.