



U.S. Citizenship
and Immigration
Services

61

[Redacted]

FILE;

Office: TEXAS SERVICE CENTER

Date:

SEP 24 2008

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.

Mari Johnson

for

Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas 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 Thai Buddhist 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, 8 U.S.C. § 1153(b)(4), to perform services as a monk. 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, 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.

Clearly, an organization that qualifies for tax exemption as a publicly-supported organization 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.

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. The necessary documentation is described in a memorandum from [REDACTED], 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):

- (1) A properly completed IRS Form 1023;
- (2) A properly completed Schedule A supplement, if applicable;
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization;
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The above list is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B), cited above.

The director denied the petition because the Internal Revenue Service classified the petitioner under section 170(b)(1)(A)(vi) rather than section 170(b)(1)(A)(i) of the Internal Revenue Code. (An earlier notice from the director also contained the assertion that the petition would be denied on this basis.) This finding, the sole stated ground for denial, is not permissible under [REDACTED] memorandum.

The petitioner had, prior to the denial of the petition, submitted ancillary evidence such as its articles of incorporation, which contain a qualifying dissolution clause, as well as the assertion that the purpose of the corporation is "to engage in religious services." Counsel indicated that the petitioner's Form 1023 "can not be located since the request for certification was submitted almost 20 years ago." The petitioner has subsequently located the document and has submitted a copy on appeal. This form, submitted to the IRS on September 1, 1982, repeatedly and consistently describes the principal purpose of the petitioning entity as religious. On Part VII of the form, under "Kind of organization," the petitioner had indicated "a church."

The director's unacceptably restrictive position that qualifying organizations must be classified as "churches" under section 170(b)(1)(A)(i) of the Code has prejudiced the outcome of the director's decision, as well as colored the type of evidence requested prior to the issuance of the denial. Even then, the petitioner has made good-faith efforts to establish its qualifying tax-exempt status. Upon consideration of the various factors in this case, the petition shall be approved.

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.