



U.S. Citizenship
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Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **APR 05 2005**
WAC 03 266 53650

IN RE: Petitioner: [REDACTED]
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.

for
Robert P. Wiemann, Director
Administrative Appeals Office

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 sustained and the petition will be approved.

The petitioner is self-described as an organization that delivers bibles to churches all over the world. It 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), to employ the beneficiary as the director of its mission. The director denied the petition on January 1, 2004, determining that the petitioner failed to establish its tax-exempt status as a religious organization.

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 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 issue to be determined is whether the petitioner has the appropriate tax exemption. The regulation at 8 C.F.R. § 204.5(m)(2) defines a "bona fide nonprofit religious organization in the United States" as an organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations, or one that has never sought such exemption but establishes to the satisfaction of Citizenship and Immigration Services it would be eligible if it had applied for tax-exempt status.

The regulation at 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 [the Code] 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 [IRS] to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

In support of the petition, the petitioner submits two letters from the IRS, dated September 11, 1992 and May 19, 1997, respectively. In the first letter, the IRS issued an advance ruling that Cornerstone Ministries International, located at P.O. Box 55819, Seattle, Washington, is exempt from federal income tax under section 501(c)(3) of the Code. The second letter reiterates Cornerstone Ministries International's tax-exempt status but also determines that the organization's status is not that of a church under section 170(b)(1)(A)(i) of the Code, but rather 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.

The record contains copies of Cornerstone Ministries International's 2000, 2001, and 2002 Form 990, Return of Organization Exempt From Income Tax which reflects its employer identification number as [REDACTED]. This number matches the number listed on the IRS letters.

The Form I-360 indicates that the petitioner, Cornerstone Ministries International, located at [REDACTED] California, lists the same employer identification number as listed by Cornerstone Ministries International in Seattle. The record also contains a copy of the Statement and Designation by Foreign Corporation filed with the state of California which indicates that Cornerstone Ministries International, organized under the laws of Washington states, has its principal executive office in the state of Washington, with its principal office in the state of California.

Based upon this information, we find that petitioner has properly established the relationship between Cornerstone Ministries International in Seattle and Cornerstone Ministries International in California and, therefore, that the tax-exemption granted to the organization in Seattle also covers the petitioning organization in California.

The next issue to be determined is whether such tax-exemption is related to the petitioner being a religious organization. In his decision, the director noted that section 170(b)(1)(a)(vi) of the Code "refers to charities that receive a substantial part of their support in the form of contributions from publicly supported organizations, from a government unit, or from the general public," and therefore, does not relate to religious organizations. The director denied the petition, in part, because of the determination that because the petitioner's tax exemption was based upon section 170(b)(1)(A)(vi) of the Code and not section 170(b)(1)(a)(i), the petitioner cannot be considered a tax-exempt religious organization.

On appeal, counsel for the petitioner argues that the director's decision "unreasonably and far too narrowly interprets the requirements under Section 501(c)(3) of the Internal Revenue Code for qualification as a tax exempt religious organization." We agree with counsel and find the director failed to give full and proper consideration of the petitioner's classification under section 170(b)(1)(A)(vi). Although the director correctly notes that 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, such a fact does not automatically render the petitioner ineligible for approval under 8 C.F.R. § 204.5(m)(3)(i).

While the burden of proof is on the petitioner to establish its classification under section 170(b)(1)(A)(vi) of the Code derives primarily from its religious character, rather than its status as a publicly supported charitable and/or educational institution, the director did not give the petitioner the opportunity to establish such a fact. As indicated by counsel on appeal, the necessary documentation is described in a 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):

- (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 memorandum specifically states that the above materials are, collectively, the "minimum" documentation that can establish "the religious nature and purpose of the organization." Thus, for example, a petitioner cannot meet this burden by submitting only its articles of incorporation. That being said, it is important to note that item (2), Schedule A of Form 1023, is only required "if applicable." If the director cannot show that Schedule A is applicable in a given instance, then the petitioner's failure to submit Schedule A is not grounds for denial of the petition. Also, obviously, it is not enough merely for the petitioner to *submit* the documents listed above. The *content* of those documents must establish the religious purpose of the organization.

Counsel cites to the petitioner's articles of incorporation and its bylaws and argues that the petitioner "has demonstrated that it was established and duly incorporated solely for the purpose of religious functions as a religious organization in the [s]tate of Washington in 1992 . . . and that it was formed to conduct religious missionary activities including church functions and its head office was/is located in Seattle, Washington." In addition to these documents, the petitioner also submits Form 1023, and various publications related to the petitioner's work. After review, we find these documents sufficiently establish the pervasively religious nature and purpose of the petitioning entity.

Accordingly, the petitioner has overcome the petitioner's sole ground for denial.

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 sustained that burden.

ORDER: The denial of the petition is withdrawn. The appeal is sustained and the petition is approved