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**U.S. Citizenship
and Immigration
Services**

01

[Redacted]

FILE: [Redacted]
SRC 04 002 53353

Office: TEXAS SERVICE CENTER Date: **DEC 13 2005**

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:

[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

S 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 before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a church. 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 Bible teacher. The director determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization.

On appeal, counsel submitted copies of previously submitted documentation.

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 single issue presented on appeal is whether the petitioner established that it qualified as a bona fide nonprofit 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 § 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.

With the petition, the petitioner submitted a copy of a June 13, 1998 charter authorizing the petitioning organization to "operate as minister in the name and articles of the [REDACTED]". The petitioner also submitted a copy of a November 18, 1997 letter from the Internal Revenue Service (IRS) to the Union Presbytery in USA, granting that organization tax-exempt status under section 501(c)(3) of the Internal Revenue Code (IRC), as an organization described in sections 509(a)(1) and 170(b)(1)(A)(i) of the IRC. The letter did not extend the tax-exemption to any subordinate unit of the [REDACTED] organization. The petitioner also submitted a copy of its articles of incorporation; however, the articles do not contain the dissolution required by the IRS to establish eligibility for tax-exempt status under section 501(c)(3) of the IRC. The petitioner submitted no other evidence to establish its tax-exempt status.

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. The petitioner must either provide verification of individual exemption from the IRS, proof of coverage under a group exemption granted by the IRS to the denomination, or such documentation as is required by the IRS to establish eligibility as a tax-exempt nonprofit religious organization. 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 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.

The organization can establish eligibility as a tax-exempt organization under 8 C.F.R. § 204.5(m)(3)(i)(B) by submitting documentation that 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 Operation for CIS, *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, and
- (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. 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.

The director, prior to denying the petition, did not provide the petitioner with an opportunity to submit the materials outlined in the [REDACTED] memorandum, and thereby establish its eligibility as a tax-exempt organization pursuant to 8 C.F.R. § 204.5(m)(3)(i)(B).

The record will be remanded. On remand, the director should give the petitioner an opportunity to establish its tax-exemption under a group tax-exemption granted to the Union Presbyter of the U.S.A., its parent organization or to establish its tax-exempt status pursuant to 8 C.F.R. § 204.5(m)(3)(i)(B), as outlined in the [REDACTED] Memorandum.

This matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.