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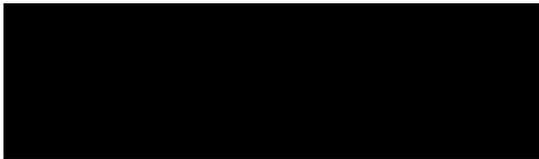
U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
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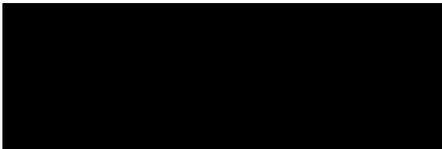
Office: NEBRASKA SERVICE CENTER

Date: JUN 30 2005

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

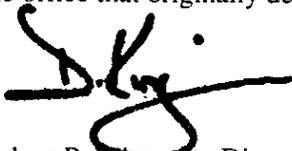
PETITION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The Administrative Appeals Office (AAO) rejected a subsequent appeal as not having been filed by an affected party. The matter is now before the AAO on a motion to reopen or reconsider. The motion to reopen will be granted. The previous decision of the AAO and the decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Citizenship and Immigration Services (CIS) policy. 8 C.F.R. § 103.5(a)(3).

The Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, lists the [REDACTED] as the petitioner. However, the beneficiary signed the petition. In its previous decision, the AAO concluded that the [REDACTED] could not be the petitioner and that the beneficiary was therefore the self-petitioner. The treasurer of the [REDACTED] signed the Form G-28, Notice of Entry of Appearance of Attorney or Representative. As counsel signed the Form I-290B, Notice of Appeal to the Administrative Appeals Unit, the AAO rejected the appeal as not having been filed by an affected party.

On motion, the petitioner submits a statement sworn to by members of the board of directors of the [REDACTED]. The board members state that they were the members of the board at the time the Form I-360 was filed, and that the petition was signed on behalf of the church by the beneficiary, [REDACTED] as chairman of the board of directors and with the full consent of the board.

We withdraw the AAO's previous decision and will consider the record on the merits of the arguments and documentation presented.

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 minister. The director determined that the petitioner had not established that the beneficiary possessed the required two years membership in the denomination.

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) echoes the above statutory language, and states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 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 August 6, 2001. Therefore, the petitioner must establish that the beneficiary was a member of its religious denomination throughout the two-year period immediately preceding that date.

With the petition, the petitioner submitted a letter dated February 19, 2001 from the superintendent of the [REDACTED]. The letter indicated that the beneficiary began serving the petitioning organization on a volunteer basis in July 1998, and began serving in a full-time compensated capacity upon approval of his R-1 nonimmigrant religious worker visa in February 1999. The petitioner submitted copies of a 1979 certificate of ordination issued to the beneficiary by the [REDACTED] a 1978 certificate of graduation from the Seoul Presbyterian Theological Seminary, and a 1976 certificate of graduation from the Full Gospel Theological Seminary. The petitioner also submitted a “certificate of employment” from the general superintendent of the [REDACTED] indicating that that beneficiary served as a certified pastor with the [REDACTED] churches from September 1991 to July 1998.

In a request for evidence (RFE) dated November 16, 2001, the director stated:

The record indicates that the petitioning entity is an [REDACTED] and that the beneficiary is a member of the [REDACTED]. The beneficiary was ordained on June 14, 1979 by the [REDACTED]. Submit a letter

from an authorized official of the religious organization in the United States that establishes how the Assembly of God denomination is affiliated with the Korea Presbyterian denomination.

In response, the petitioner submitted a July 1, 2002 letter from the [REDACTED] signed by its general secretary and the superintendent, which stated:

[The beneficiary] is an Ordained Minister in the [REDACTED]. He was initially ordained in 1979 by the Presbyterian Church, but in 1991 became a member of the Assemblies of God denomination. His ordination credentials [sic] were fully accepted by our denomination and he has served as an ordained Assembly of God Pastor, both in Korea commencing in September 1991, and now in the United States continuously since 1991. He has been a minister in our denomination for over ten (10) years. Of course he has also been a member of our denomination continuously for that same period.

The assemblies [sic] of God do not issue a separate certificate of ordination when we accept a pastor who was originally ordained in another denomination or who already earned a degree from The Assemblies of God Theological Seminary which is the case for [the beneficiary] (Otherwise, they are required to take some courses on church doctrine and law) because we believe that ordination [sic] is a one time event . . . [The beneficiary] is duly authorized by our denomination as an ordained [sic] Pastor and authorized to carry out all of the duties normally associated with any Pastor of the denomination, including administering sacraments, preaching the gospel, etc.

The evidence sufficiently establishes that the beneficiary was a member of the petitioner's denomination and a credentialed minister for two full years prior to the filing of the visa preference petition.

In its prior decision, the AAO found, beyond the decision of the director, that the record indicated the petitioner had failed to submit sufficient evidence to establish that it was a bona fide nonprofit religious organization, that it had the ability to pay the beneficiary the proffered wage or that it had extended a qualifying job offer to the beneficiary. On motion, the petitioner submits additional documentation.

The first issue is whether the petitioner established 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 the articles of incorporation for the [REDACTED] and a copy of a 1987 letter from the [REDACTED] issued to the [REDACTED]

In his RFE, the director instructed the petitioner to "submit a tax-exempt certificate indicating that the affiliated organization 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 response, the petitioner submitted a copy of a June 1986 letter from the Internal Revenue Service (IRS) to the [REDACTED] granting that organization a group tax-exemption for its subordinate units listed in its application for group exemption. The exemption was granted for these organizations under section 501(c)(3) as organizations described in sections 509(a)(1) and 170(b)(1)(A)(i) of the IRC. The petitioner submitted a "Certificate of Membership" signed by the superintendent and general secretary of the [REDACTED] certifying that the petitioning organization and its pastor, the beneficiary of this petition, are formally affiliated with the [REDACTED]. The petitioner also submitted a copy of an undated certificate of amendment to the articles of incorporation for the [REDACTED] indicating that the organization changed its name to the [REDACTED]. The petitioner did not submit evidence that the petitioning organization was included in the list of subordinate organizations submitted to the IRS and therefore falls under the group tax-exemption granted to the [REDACTED].

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 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) 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 that contains a proper dissolution clause and which specifies the purposes of the organization.

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. The requirements of establishing tax-exemption as a religious organization pursuant to 8 C.F.R. § 204.5(m)(3)(i)(B) are further detailed in a memorandum from William R. Yates, 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), and are as follows:

- (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). 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.

On motion, the petitioner resubmitted previously submitted documentation.

On remand, the director should give the petitioner an opportunity to submit evidence of its inclusion in the group tax-exemption granted to its parent organization, an individual exemption granted to the petitioning organization, or evidence pursuant to 8 C.F.R. § 204.5(m)(3)(i)(B) as outlined in the Yates memorandum.

The second issue is whether the petitioner established that it had extended a qualifying job offer to the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

According to the February 19, 2001 letter from the [REDACTED] the beneficiary will fill the position being vacated by another minister who was reassigned to a different congregation. The letter indicated that the beneficiary was expected to work approximately 40 hours per week, and would receive an annual compensation of \$21,000 per year plus housing and utilities (valued at \$11,500) and "standard benefits." The letter indicated that the beneficiary first served in this position as a volunteer, but became a fully compensated employee in February 1999.

The record sufficiently establishes that the petitioner has extended a qualifying job offer to the beneficiary.

The third issue is whether the petitioner established that it had the ability to pay the beneficiary the proffered wage.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

With the petition, the petitioner submitted copies of its budgets and expenses for the years 1997 through 2001. In response to the RFE, the petitioner submitted copies of its July through December 2001 monthly bank

statements and a copy of the beneficiary's year 2000 Form 1040, U.S. Individual Income Tax Return. The petitioner also submitted copies of the appraisals for its various properties.

The above-cited regulation states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation.

On motion, the petitioner submits copies of its monthly checking account statements for the period January 2001 to March 2004, a copy of a June 8, 2004 letter from a credit analyst at the petitioner's bank, a consolidated financial statement of the petitioner for 2001 through June 9, 2004, and copies of its property appraisals. The petitioner also submitted copies of the beneficiary's Form 1040 for the years 2001 through 2003. Although the beneficiary indicated on his tax returns that he worked for the petitioning organization, the petitioner submitted no evidence of any wages or other compensation that it paid to the beneficiary, such as a Form W-2, Wage and Tax Statement, or Form 1099 MISC, Miscellaneous Income, reflecting nonemployee compensation.

The petitioner has not submitted any of the required types of primary evidence. On motion, counsel submits a copy of a May 4, 2004 memorandum from CIS Associate Director of Operation Mr. Yates, *Determination of Ability to Pay under 8 CFR 204.5(g)(2)*. Counsel references Mr. Yates in stating that CIS adjudicators should make a positive determination of ability to pay if the evidence reflects "that the petitioner's net income is equal to or greater than the proffered wage" or "that the petitioner's net current assets are equal to or greater than the proffered wage."

Nonetheless, the petitioner did not submit copies of the petitioner's federal income tax returns or audited financial statements from which these determinations can be made. Counsel's assertion that this information can be determined by looking at the tax valuation of the petitioner's property and the outstanding value of its bank loan is clearly without merit.

On remand, the director should give the petitioner the opportunity to establish that it has the ability to pay the proffered wage with evidence consistent with the requirements of the regulation as further clarified in Mr. Yates memorandum of May 4, 2002.

Additionally, beyond the decision of the director and the AAO's previous decision, the petitioner has not established that the beneficiary was continuously engaged in a qualifying religious vocation or occupation for two full years preceding the filing of the visa petition.

The petitioner stated that the beneficiary began with the petitioning organization as a volunteer in July 1998, and began working in a full-time compensated capacity upon approval of his R-1 nonimmigrant religious worker visa in February 1999. The petitioner submitted no evidence to corroborate the beneficiary's employment in 1999. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

On remand, the petitioner should be given the opportunity to establish that the beneficiary worked continuously as a minister for the two years immediately preceding the filing of the visa petition.

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 and the previous decision of the AAO are 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.