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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

AUG 11 2006

IN RE:

Petitioner:

Beneficiary:



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:

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.

A handwritten signature in cursive script that reads "Mai Johnson".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner identifies itself as a "Buddhist meditation center and Lao community." 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 "missionary monk." The director determined that the petitioner had not established its qualifying tax-exempt status or its ability to support the beneficiary.

On appeal, the petitioner submits documents showing that it has applied for and received recognition of qualifying tax-exempt status.

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 first issue concerns the petitioner's tax status. 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.

██████████ president of the board of directors of the petitioning organization, states that the petitioner "is a non-profit religious organization." The petitioner's initial submission included nothing from the Internal Revenue Service (IRS) to establish recognition of tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986 (the Code). The only IRS documentation to accompany the initial filing is a letter informing the petitioner of its Employer Identification Number. The includes instructions for the petitioner "to apply to receive a ruling or determination letter recognizing your organization as tax exempt."

In a request for evidence (RFE) issued on June 16, 2005, the director instructed the petitioner to submit a copy of an IRS determination letter to satisfy 8 C.F.R. § 204.5(m)(3)(i)(A), or the documentation that the IRS would require to issue such a letter under 8 C.F.R. § 204.5(m)(3)(i)(B). The director specified the nature of this evidence, stating: "the documentation should include, at a minimum, a completed IRS Form 1023, the Schedule A supplement that applies to churches, and a copy of the organizing instrument of the church that contains a proper dissolution clause and that specifies the purpose of the organization." In response, the petitioner has submitted a copy of a letter, dated August 5, 2005, from the IRS. The letter acknowledges receipt of the petitioner's Form 1023 application. Judging from the date of the letter, it appears that the petitioner applied for recognition of exemption after receiving the RFE.

In denying the petition, the director stated that the petitioner did not submit the documentation requested in the RFE, and that therefore the petitioner had not established that it is recognized as tax-exempt or that it qualifies for such recognition.

On appeal, the petitioner submits a letter dated October 7, 2005, from the IRS, requesting additional information and evidence regarding the petitioner's Form 1023 application. The letter advises the petitioner: "based on the evidence we have, we cannot recognize you as [a tax-exempt] organization." One cited reason is that the petitioner's articles of incorporation "do not contain the required provisions," for instance a qualifying dissolution clause, and therefore the petitioner "must amend them" to bring them into conformity with IRS requirements. The letter indicates that the IRS may consider the petitioner's application to be abandoned if the petitioner did not respond by October 21, 2005: "If we receive the information after the response due date, we may ask you to send us a new Form 1023."

The petitioner also submits, on appeal, a copy of amendments to its articles of incorporation, intended to bring that instrument into conformity with IRS requirements. A "Filing Acknowledgement" from the Nevada Office of the Secretary of State shows that the amendment was filed on November 2, 2005, after the IRS' October 21 deadline. A later supplement to the appeal includes an IRS letter dated November 22, 2005, recognizing the petitioner as a tax-exempt church under section 170(b)(1)(A)(i) of the Code.

Notwithstanding the November 22, 2005 IRS letter, the IRS' earlier letter is *prima facie* evidence that, as late as October 7, 2005, the petitioner did not qualify for classification as a tax-exempt religious organization under section 501(c)(3) of the Code because its articles of incorporation did not meet IRS' requirements.

While the petitioner later amended its articles of incorporation to the IRS' satisfaction, these amendments were not in effect at the time the petitioner filed the petition in May 2004. Any subsequent changes to the petitioner's articles of incorporation, in order to qualify the petitioner for tax-exempt status, cannot retroactively change the petitioner's status as of 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 CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998). We also note *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), which requires that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. By the same logic as *Katigbak*, we find that a petitioning employer must likewise meet all relevant requirements as of the filing date.

At the time it filed the petition, the petitioner was not recognized as tax-exempt, nor (due to deficiencies in its articles of incorporation) was it eligible for such recognition. Therefore, the present petition, with its May 2004 filing date, cannot be approved.

The other basis for denial concerns the petitioner's compensation and support of the beneficiary. 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.

Andrew Adams states: "in lieu [of] salary, [the beneficiary] will receive the necessities of life such as food, clothes and shelter from the temple." The only documentation submitted relating to the petitioner's finances is a bank statement showing that the petitioner held a bank balance of \$7,845.30 as of May 11, 2004.

In the RFE mentioned above, the director instructed the petitioner to submit evidence of the types listed at 8 C.F.R. § 204.5(g)(2) or, in the alternative, "**well-documented** evidence that it provided all of the beneficiary's living expenses during **2004**" (emphasis in original). The assertion that the beneficiary is compensated via material support, rather than through a cash salary or wage, does not relieve the petitioner of the burden of demonstrating its ability to provide that support.

In response, Andrew Adams states:

This is our affidavit of support for [the beneficiary] who was a missionary monk.

As you provide the requested documentation from us to submit all evidence of [the beneficiary] that we sent to you. Now we are waiting further notice from IRS that we applied for tax exemption 501(c)(3).

We, therefore, attached this copy documentation to let you know.

[*Sic.*] The meaning of the above passage is not clear. [REDACTED] appears to be saying that the petitioner will offer a more substantive response once the IRS issues a decision on the petitioner's Form 1023 exemption application. In the RFE, the director had advised the petitioner that all requested evidence must be submitted "at one time." The regulation at 8 C.F.R. § 103.2(b)(8) prohibits any extension of the response period.

The director, in denying the petition, concluded "the evidence is insufficient to establish that the petitioner has the ability to remunerate or financially support the beneficiary." On appeal, the petitioner does not rebut, contest or even address this finding; the appeal, as discussed above, is devoted entirely to the issue of the petitioner's tax-exempt status. Therefore, the petitioner has not overcome the director's finding regarding the petitioner's ability to support the beneficiary.

Beyond the director's decision, review of the record reveals another obstacle to approval of the petition as filed in May 2004. The regulation at 8 C.F.R. § 204.5(m)(1) 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." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a missionary monk throughout the two years immediately prior to the May 17, 2004 filing date.

The petitioner indicates that the beneficiary arrived in the United States on March 11, 2003, less than two years before the filing date. Therefore, the petitioner's own attestations cannot establish, first-hand, that the beneficiary worked continuously as a missionary monk throughout the May 2002-May 2004 qualifying period. A photocopied certificate shows that the beneficiary became a monk in 2000, but this document does not show that the beneficiary continuously carried on the vocation from May 2002 until the filing date. The director had instructed the petitioner to submit more evidence regarding the beneficiary's experience, but, as noted above, the petitioner's response addressed only the tax-exemption issue.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely 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.