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U.S. Citizenship  
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[REDACTED]

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **AUG 15 2008**  
EAC 05 041 53739

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:

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.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the employment-based immigrant visa petition, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted, the AAO's previous decision will be affirmed and the petition will be denied.

The petitioner is a self-described "group of . . . Buddhist Churches." 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 its financial ability to compensate or support the beneficiary. The AAO affirmed the director's decision and dismissed the appeal.

On motion, the petitioner submits letters, financial materials, and real estate documents.

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 sole articulated basis for denial concerns the petitioner's ability to compensate 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.

Pursuant to 8 C.F.R. § 204.5(d), the priority date of a special immigrant petition is established at the date of filing. Therefore, in this instance, the petitioner must establish its ability to compensate or support the beneficiary from the November 29, 2004 filing date onward.

On motion, the petitioner asserts that the AAO's appellate decision contained two "erroneous conclusions," specifically the AAO's findings that: (1) the petitioner did not "document its ownership or control . . . of any property where the beneficiary resides"; and (2) the petitioner provided only a rural delivery box number, not a physical street address, for [REDACTED], its "retreat center" in Greenville, New York.

Responding to the above findings, His Holiness [REDACTED], President and Chairman of the petitioning organization, states:

Not only do we, the petitioner, own both properties mentioned in the original filing, it was also stated thus. In the CPA review dated January 19, 2006, our CPA wrote, ". . . the Retreat Center operates on over 68 acres and has 11 buildings on the property. . . . In addition, [the petitioner] owns a residential dwelling at [REDACTED] in New York City."

The AAO did not dispute that the petitioner claimed to provide housing for the beneficiary. Rather, the AAO stated that the petitioner failed to provide documentary evidence that it owned or controlled a property where the beneficiary was housed. The accountant's assertion is not "documentation" of such ownership; it is, rather, a claim of such ownership.

Regarding the address of the retreat center, Mr. [REDACTED] states: "As the retreat center is located in a small community off a state route, for many years there were only rural route addresses. This has now changed to 911-style addresses. In either case, the address has always referred to a physical address and a physical property which is the Retreat Center." He continues: "Both of these erroneous conclusions were used to justify the decision to dismiss our appeal. As the conclusions are erroneous, we feel that the decision is thus also flawed and we ask that our case be reconsidered." The above observations, however, were peripheral rather than central to the AAO's main conclusions.

The AAO's two primary conclusions were: (1) the petitioner's evidence did not meet the documentary standards of 8 C.F.R. § 204.5(g)(2); and (2) "the financial evidence that the petitioner did submit is both incomplete and facially indicative of an overall pattern of financial loss." In order to warrant a reversal of the AAO's dismissal order, the petitioner must overcome both of these findings on motion.

The petitioner asserts that OCD in Greenville falls under the umbrella of the petitioning entity in New York City, but that the two entities are financially separate. Mr. [REDACTED] asserts that "the financial statements for [REDACTED] [are] the most applicable statements in regards [*sic*] to" the beneficiary. Such statements must conform to 8 C.F.R. § 204.5(g)(2), which requires the prospective employer to establish its ability to compensate the beneficiary, with documentation "either in the form of copies of annual reports, federal tax

returns, or audited financial statements.” In its appellate decision, the AAO stated: “The petitioner has submitted none of these types of evidence.” The petitioner, on motion, does not dispute this finding by the AAO.

asserts: “in accordance with the federal laws regulating our church status, we are not required to file any tax returns, nor are we required to have audited financial reports or formal annual reports.” The present proceeding, however, is not about what the Internal Revenue Service requires regarding the petitioner’s “church status.” It is, rather, about the petitioner’s compliance with Citizenship and Immigration Services regulations.

The regulation at 8 C.F.R. § 204.5(g)(2), by its plain wording, applies to “any petition filed by or for an employment-based immigrant which requires an offer of employment.” Because the special immigrant religious worker classification requires an offer of employment, it falls within the compass of that regulation. The current regulatory scheme creates no exemption or separate standard of evidence for religious entities. states that an audit would be costly and time-consuming, and “[a]s your agency is the only one requesting this audit of us, there is no other need for this heavy expense.” Thus, the petitioner’s motion rests on the assertion that the petitioner would prefer not to be held to the evidentiary requirements set forth in the regulations. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Because the regulations are not voluntary guidelines or suggestions, a stipulation of the petitioner’s unwillingness to comply with those regulations cannot compel reversal of the AAO’s prior decision to dismiss the petitioner’s appeal. The AAO notes that the submission of an audited financial report at this late date would not compel the AAO to reopen and approve the petition. 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, 175 (Commr. 1998).

The petitioner asks that we accept a reviewed financial statement for OCD in place of the required audited financial statement. The statement submitted on appeal has two columns, one for calendar year 2005 and the other for calendar year 2006. The petitioner had previously submitted an unreviewed financial statement for OCD for calendar year 2005. The two statements for 2005 do not match. For example, the first statement for 2005 indicated that OCD’s “Total Income” was \$99,288.88. The new statement indicates that OCD’s total 2005 income was \$145,503.88. Within the category of income, the first statement reflected \$5,776.25 in “Teaching Income.” The same line item in the new statement shows \$6,566.25. The amount reported as “Net Ordinary Income” was \$3,046.78 on the first statement and \$59,108.90 on the second statement, a nearly twenty-fold increase. The same accountant prepared both versions of the statement, but he does not explain or even acknowledge the significant differences between the two versions. The petitioner submits no documentary evidence to establish that the newer statement is more reliable than the older one. The major, unexplained discrepancies undermine the credibility of the statements, and demonstrate why audited statements are to be preferred over unaudited statements.

Furthermore, the submission of a new financial statement that utterly contradicts the previous financial statement cannot refute the AAO’s prior finding that the petitioner’s own documents indicate, on their face,

that the petitioner registered “a cumulative net loss of \$17,406.65” during the two years bookending the petition’s late 2004 filing date.

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 not sustained that burden. Accordingly, the previous decision of the AAO will be affirmed, and the petition will be denied.

**ORDER:** The AAO’s decision of July 20, 2007 is affirmed. The petition is denied.