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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Public Copy

File: WAC-00-179-53780

Office: California Service Center

Date: AUG 1 2001

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)

IN BEHALF OF PETITIONER: [Redacted]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Myra L. Rosenly
for Robert P. Wiemann, Acting Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The immigrant visa petition was denied by the Director, California Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is described as a Sikh temple. It seeks classification of the beneficiary as a special immigrant minister pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), in order to employ him as a priest at a salary of \$500 per month.

The center director denied the petition determining that the petitioner failed to submit the required documentation to establish that it is a qualifying tax exempt organization.

On appeal, an official of the petitioner stated that they have applied for tax exempt recognition from the Internal Revenue Service (IRS) and they therefore requested an extension of up to ninety days to submit the required documentation when it is received from the IRS.

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, 2003, 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, 2003, 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).

A petitioner must establish that it is a qualifying organization eligible for special immigrant classification of the alien beneficiary.

8 C.F.R. 204.5(m) (3) states, in pertinent part, that 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 section 501(c) (3) of the Internal Revenue Code of 1986 as it relates to religious organizations; or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c) (3).

The petitioner must submit either certification from the IRS of the appropriate tax exempt recognition or such documentation as is required by the IRS. Such documentation to establish eligibility for exemption under section 501(c) (3) includes: a completed Form 1023, a completed Schedule A attachment, and a copy of the corporate organizing instrument with a qualifying dissolution clause.

The appeal was filed on November 29, 2000. As of this date, approximately eight months later, no further documentation has been received from the petitioner. The petitioner has failed to establish that it is exempt from, or eligible for exemption from, taxation as a religious organization as described in sections 501(c) (3) and 170(b) (1) (A) (i) of the Internal Revenue Code. Accordingly, the petitioner has failed to overcome the grounds for denial and the appeal must be dismissed.

Beyond the discussion in the director's decision, the petitioner has failed to demonstrate eligibility on other grounds. The petitioner has failed to establish that it has tendered a qualifying job offer pursuant to 8 C.F.R. 204.5(m) (4); that it has the ability to pay the proffered wage pursuant to 8 C.F.R. 204.5(g) (2); that the beneficiary had been continuously and solely carrying on the vocation of a priest for the two years preceding the filing of the petition pursuant to 8 C.F.R. 204.5(m) (3) (ii) (A); or that the beneficiary is qualified as a minister/priest as defined at 8 C.F.R. 204.5(m) (2). As the appeal will be dismissed on the grounds discussed, these issues need not be examined further.

ORDER: The appeal is dismissed.