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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
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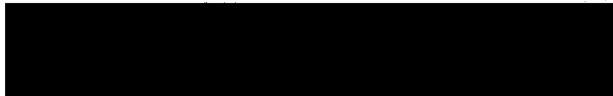
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File: EAC-99-224-51636

Office: Vermont Service Center

Date: JUL 3 2001

IN RE: Petitioner:  
Beneficiary:



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:



Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, Vermont 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 synagogue. It seeks classification of 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), in order to employ him as a cantor.

The director denied the petition determining that the petitioning organization failed to submit the required documentation to establish that it is a qualifying religious organization exempt from, or eligible for exemption from, taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

On appeal, counsel for the petitioner argued that the petitioner is a qualifying organization, that the Internal Revenue Service does not require an application for exemption to be filed, and that the Service is estopped from denying on this basis because a previous nonimmigrant religious worker petition was approved and that nonimmigrant provision contains the same tax exemption requirement.

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).

At issue is the requirement that the petitioner establish that it is a qualifying religious organization as defined in these proceedings.

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 petition was filed on July 19, 1999. Every application or petition filed must be completed as applicable and filed with any initial evidence required by regulation or specified in the instructions on the form. 8 C.F.R. 103.2(a)(1). In a special immigrant religious worker petition, the initial evidence includes evidence that the United States employer is exempt from, or eligible for exemption from, taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations. 8 C.F.R. 204.5(m)(3)(i). The petitioner did not furnish such documentation at the time of filing.

In instances where there is no evidence of ineligibility in the record, and initial evidence is missing, the Service shall request the initial evidence. 8 C.F.R. 103.2(b)(8). The director issued a written notice on March 4, 2000, requesting the required evidence regarding the petitioner's tax exempt status or eligibility for such exemption. In response, the petitioner submitted, in pertinent part, the instruction sheet from IRS Form 1023 which states that religious institutions such as churches are tax exempt and are not required to file Form 1023 for formal recognition as tax exempt entities.

The director denied the petition due to the petitioner's failure to satisfy the documentary requirements of 8 C.F.R. 204.5(m)(3).

Counsel argued on appeal, in pertinent part:

With this appeal, Congregation Brothers of Israel is filing additional proof, consisting of a letter from the Board of Trustees member...which demonstrate that Congregation brother [sic] of Israel is indeed a bona fide nonprofit religious organization. Inasmuch as Congregation Brothers of Israel was formed prior to October 9, 1969, they do not require a tax exempt certificate pursuant to section 501(c) (3) of the Internal Revenue Code of 1988 [sic].

The pertinent Service regulations provide for two methods to demonstrate that a petitioner is a qualifying religious organization. A petitioner may submit a recognition letter from the Internal Revenue Service ("IRS") showing that the church, synagogue, or other religious institution has been recognized as a tax exempt religious organization in accordance with section 501(c) (3) of the Internal Revenue Code of 1986 as it relates to religious organizations. A petitioner may also submit such documentation that is required by the IRS for such tax-exempt recognition. The documentation required by the IRS 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 articles of organization showing, *inter alia*, the disposition of assets in the event of dissolution.

It is noteworthy that there are several classifications of tax exempt organizations under section 501(c) (3) of the Internal Revenue Code and only those defined as "churches" pursuant to sections 509(a) (1) and 170(b) (1) (A) (i) are qualifying organizations for the purpose of special immigrant religious worker classification.

In this case, the petitioner has made it clear that it has not filed a Form 1023 with the IRS to obtain formal tax exempt recognition and that it is not required to do so pursuant to IRS regulations. Service regulations, however, explicitly require the submission of the documentation required by the IRS in order to establish that a petitioner is a qualifying religious organization. Service regulations are controlling, not those of the IRS. There is no provision whereby the Service will accept a letter from an official of the petitioning organization as proof of its eligibility for tax exempt recognition.

In this case, the petitioner has submitted the instruction sheet of a Form 1023, a blank copy of a schedule A, and its by-laws containing an appropriate dissolution clause. After three distinct opportunities to satisfy this requirement, the petitioner has failed to submit a completed Form 1023 and a completed schedule A as required by 8 C.F.R. 204.5(m) (3) (i) (B). The petitioner's failure to comply with this simple requirement remains unexplained. Nevertheless, the petitioner has failed to overcome the ground for denial stated in the decision of the center director and the appeal

will be dismissed.

Counsel's additional argument that the Service is estopped from denying the instant petition, on the ground of failure to satisfy the tax exempt requirement, because it erroneously approved a previous nonimmigrant petition with a similar requirement is without merit. This Service, or any federal administrative agency, is not bound to treat acknowledged past errors as binding. See Chief Probation Officers of Cal. v. Shalala, 118 F.3d 1327 (9th Cir. 1997); Thomas Jefferson Univ. v. Shalala, 512 U.S. 504, 517-518 (1994); Sussex Engineering, Ltd. v. Montgomery, 825 F.2d 1084 (6th Cir. 1987).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.