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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

JUL 02 2003

File: WAC 00 037 51955 Office: CALIFORNIA SERVICE CENTER Date:

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:

INSTRUCTIONS:

This is the decision 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.

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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. 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.

We note that the appellate decision indicated that the petitioner was self-represented. The petitioner had submitted a Form G-28 Notice of Entry of Appearance as Attorney or Representative from [REDACTED] on January 29, 2002, prior to the appellate decision. This correspondence, however, was apparently not incorporated into the record until after the decision was rendered. The correspondence appears to be a status inquiry, and copies of previously submitted letters, rather than a substantive submission that would have affected the outcome of the AAO's decision. There is no evidence that Ms. [REDACTED] was involved in the preparation of the present motion.

The petitioner is a church and bible college. 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 religious counselor. The director determined that the petitioner had not established (1) that it was a qualifying tax exempt organization, or (2) that the beneficiary had the requisite two years of continuous work experience immediately preceding the filing date of the petition. The AAO dismissed the appeal, concurring with the stated grounds of denial and adding several further observations: (1) the petitioner has not established when the beneficiary entered the United States, and therefore the petition form is incomplete and the beneficiary's two years of continuous employment is in further doubt; (2) the beneficiary's unpaid volunteer work does not constitute "employment" and therefore cannot form the basis for an employment-based immigrant petition; (3) the petitioner has submitted conflicting information regarding the beneficiary's salary and intended employment; and (4) the petitioner has not submitted required documents to establish its ability to pay the beneficiary's proffered wage.

On motion, the petitioner submits copies of financial documents and other materials.

The complete statutory and regulatory language appears in the AAO's prior appellate decision and need not be repeated in full here.

The first issue is the petitioner's failure to submit documentation to establish IRS recognition as a 501(c)(3) tax-exempt religious organization. On motion, the petitioner submits documentation showing that the petitioning church has been registered as a domestic nonprofit corporation with the State of California. The AAO, in its appellate decision, had already acknowledged the petitioner's submission of California documents. The AAO had specifically stated that the record lacked documentation of the petitioner's federal (as opposed to state) tax-exempt status. The submission of further state documents, regardless of their quantity, cannot overcome this finding. The petitioner has not submitted documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986, as required by 8 C.F.R. § 204.5(m)(3)(i). Therefore, the petitioner, despite repeated opportunities to remedy this deficiency, has failed to meet its burden of proof.

The next issue concerns the requirement that the petitioner show that the beneficiary was continuously employed as a religious worker for the two years immediately preceding the filing of the petition, as required by 8 C.F.R. § 204.5(m)(1). The AAO had previously noted that, while beneficiary had performed counseling services for the petitioning church, these services had consisted of unpaid volunteer work; the beneficiary was, at the same time, employed as a medical assistant at a health clinic. The AAO stated:

The Service [now the Bureau] holds that lay persons who perform volunteer activities, especially while also employed in a secular occupation, are not engaged in a religious occupation and that the voluntary activities do not constitute qualifying work experience for the purpose of an employment-based special immigrant visa petition.

The AAO also noted the petitioner's submission of two conflicting descriptions of the job offer, one indicating that the petitioner would employ the beneficiary as a missionary, earning \$1,200 per month, the other indicating that the beneficiary would work as a counselor for \$1,500 per month. Given these inconsistencies, the AAO concluded "the petitioner has not tendered a qualifying job offer."

The petitioner's submission on motion does not address any of the above findings. The petitioner does not submit any new documentation relating to the beneficiary's employment, nor does the petitioner argue that the AAO had overlooked previously submitted evidence that would resolve this issue. The only document submitted on appeal that relates specifically to the beneficiary is a Diploma of Theology which the petitioner (in its capacity as a bible college) issued to the beneficiary on January 26, 2002, indicating that the beneficiary "[h]as satisfactorily completed our required course of studies in the Holy Scripture, and has earned the approbation of our Directorate and Faculty."

Regarding the petitioner's ability to pay, 8 C.F.R. § 204.5(g)(2) states in pertinent part:

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.

On motion, the petitioner submits a copy of the Form 1040 Individual Income Tax Return for Reverend [REDACTED] and his spouse. This tax return reflects the finances of the pastor, not of the petitioning church, and therefore it cannot establish the petitioner's ability to pay the proffered wage. The petitioner has not submitted documentation of the types required by 8 C.F.R. § 204.5(g)(2).

The petitioner also submits copies of the petitioner's state income tax return from 1990. Apart from the fact that this tax return dates from several years prior to the petition's filing date, the regulation cited above plainly demands federal tax returns. Other financial documents submitted on motion include copies of bank receipts, bank statements, cancelled checks, and a handwritten ledger. The regulation indicates that evidence of ability to pay "shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements." The petitioner is required to submit at least one of those three types of documents. While additional financial documentation can be considered, it will be in addition to, rather than in lieu of, the specific types of documentation required by regulation.

For the reasons discussed above, the petitioner's submission on motion fails to address, much less overcome, the grounds for dismissal set forth in the AAO's prior appellate decision.

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 May 1, 2002 is affirmed. The petition is denied.