



U.S. Citizenship  
and Immigration  
Services

C-1

[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER Date:

AUG 03 2004

IN RE:

Petitioner:

[REDACTED]

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)

ON BEHALF OF PETITIONER:

[REDACTED]

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, Director  
Administrative Appeals Office

for

PUBLIC COPY

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a "Christian Mission Organization." 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 "director of missionary development." The director determined that the petitioner had not established its status as a tax-exempt religious organization. The director also determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience immediately preceding the filing date of the petition. The director further determined that the petitioner had failed to establish that it had extended a valid job offer to the beneficiary, that the beneficiary was qualified for the position within the organization, that the position qualified as that of a religious worker, or that the petitioner had the ability to pay the beneficiary the proffered salary.

On the Form I-290B, Notice of Appeal to the Administrative Appeals Unit, counsel indicates that the reason for the appeal "is to appeal that portion of the decision regarding the proper interpretation and application of Internal Revenue Code sec. 501(c)(3) and sec. 170(b)(1)(a)(vi)." Counsel requested 60 days in which to submit a supporting brief. However, as of the date of this decision, more than 13 months after the appeal was filed, no further documentation has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

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 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 regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

(3) *Initial evidence.* Unless otherwise specified, 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 § 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 § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

To meet the requirements of 8 C.F.R. 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code (IRC) of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, which applies to churches, and a copy of the organizing instrument of the church which contains a proper dissolution clause and which specifies the purposes of the organization.

The petitioner submitted a copy of a letter dated January 29, 1993, in which the IRS ruled that the petitioner was exempt from taxation under section 501(c)(3) of the IRC as a foundation under sections 509(a)(1) and 170(b)(1)(A)(vi). The petitioner also submitted a copy of its articles of incorporation in the state of Florida, which specifies the purpose of the organization but does not contain a dissolution clause, as required by the regulation.

On appeal, counsel acknowledges that sections 509(a)(1) and 170(b)(1)(A)(vi) also pertains to other, non-religious organizations. Counsel argues that the evidence submitted "substantiates that the petitioner is a religious organization," as that is its "sole function." The language of the regulation is clear, nonetheless. Absent a letter from the IRS granting tax-exempt status as a religious organization, the regulation requires the petitioner to submit "such documentation" as is required by the IRS to establish eligibility for tax exemption as it relates to religious organizations. The evidence submitted by the petitioner is not sufficient under the regulations, and does not establish its bona fides as a tax-exempt religious organization under section 501(c)(3).

The petitioner does not appeal any other determination made by the director, and the record does not reflect a clear error by the director in her decision. Therefore, except as discussed below, we will not address the other grounds for which the director denied the petition.

The Form I-360, Petition for Amerasian, Widow or Special Immigrant, indicates that the petitioner was not in the United States at the time the petition was filed. The petitioner stated, however, that the beneficiary has made his home in the United States since 2001. CIS records reflect that more than one alien whose name and birthday match the beneficiary have made entry into the United States. The director found that it could not be determined that the beneficiary's sole purpose for entering the United States was to work for the petitioner.

We withdraw this determination by the director. The regulation does not require that the alien's initial entry into the United States to be solely for the purpose of performing work as a religious worker. "Entry," for purposes of this classification, would include any entry under the immigrant visa granted under this category or would include the alien's adjustment of status to the immigrant visa.

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 appeal will be dismissed.

**ORDER:** The appeal is dismissed.