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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE: [Redacted] SRC 02 051 51653

Office: TEXAS SERVICE CENTER

Date: DEC 10 2004

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)

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, Director
Administrative Appeals Office

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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

The petitioner is a "communal organization established . . . to advocate issues that are important to the furtherance of Orthodox Jewry." 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 kosher food supervisor. The director determined that the petitioner had not established that the beneficiary would be employed by a religious denomination having a bona fide nonprofit religious organization in the United States.

On appeal, the petitioner submits additional documentation.

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).

In its letter accompanying the petition, the petitioner stated that the beneficiary would be employed in South Florida, and sent to various establishments where supervision was required. In response to the director's request for evidence (RFE) dated April 7, 2003, the petitioner stated that the beneficiary's function would be "to oversee and supervise the [redacted] of the kosher sections of the [redacted] supermarket in [redacted]. Although his salary is paid by [redacted], he reports and is responsible to [the petitioner]."

The petitioner submitted a copy of its agreement with [redacted]. The agreement contains the following provisions:

Union of Orthodox Jewish Congregations of America, Kashruth Division (the "OU")

Albertson's Inc. (the "Company")

shall mean a specially trained rabbinical inspector who is employed by Company and who shall ensure adherence to in food processing.

"Rabbinic Field Representative" shall mean that person who is not employed by Company but who is an employee or representative of OU and who supervises th

The agreement further states that the agreement does not establish a joint venture, partnership, or any similar relationship between the parties. The agreement also includes a fee schedule established for the petitioner's services to . The petitioner also submitted a copy of the beneficiary's 2002 W-2, Wage and Tax Statement, issued by and copies of pay stubs for April 2003, indicating that the beneficiary was paid by .

The statute clearly states that the alien must be coming to the United States for the purpose of working for the religious 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 (IRC).

The record establishes that the beneficiary is an employee of . 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.

The petitioner must therefore establish that Albertson's Inc., the organization for which the beneficiary works, is a bona fide nonprofit tax-exempt religious organization under section 501(c)(3) of the IRC and that it is affiliated with the beneficiary's religious denomination.

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 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 IRC as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, if applicable, and a copy of the organizing instrument of the organization which contains a proper dissolution clause and which specifies the purposes of the organization.

Although the petitioner submitted a letter from the IRS that establishes the petitioner as a bona fide nonprofit religious organization, it submitted no evidence that Albertson's Inc. is a tax-exempt bona fide nonprofit religious organization.

On appeal, the petitioner asserts that it employed the beneficiary but that [REDACTED] elected to pay the beneficiary for insurance reasons. In a letter dated April 28, 2003, [REDACTED] the kashrus administrator for the [REDACTED] (ORB) of [REDACTED] states:

Our mashgichim are paid by the facility. We send out the mashgiach to the facility but it is the facility that pays for his services. Nevertheless, even though the facility pays the mashgiach, he works under our direction. His allegiance is to us not to the facility. In a few cases, we have facilities which pay us for the services of the mashgiach and we then pay the mashgiach. In these cases it is still ultimately the facility which pays the mashgiach.

Nonetheless, the agreement between the petitioner and [REDACTED] clearly indicate that the beneficiary is an employee of [REDACTED]. The evidence does not establish that the beneficiary works for [REDACTED] in any capacity as a contract employee of the petitioner.

The record fails to establish that the beneficiary's employer is a bona fide nonprofit religious organization or that it is affiliated with any religious denomination, as required by the statute and regulation.

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.