

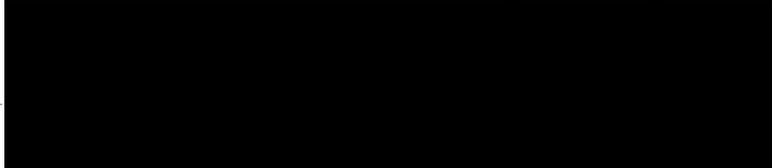
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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**



FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JUL 12 2004

IN RE: Petitioner: [redacted]
Beneficiary: [redacted]

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:
[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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is an organization that trains Christian missionaries. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as a missionary worker. The director determined that the petitioner had not established that it qualifies as a tax-exempt religious organization.

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).

8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit 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 (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 section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

According to documentation from the Internal Revenue Service (IRS), the petitioner's tax-exempt status derives from classification not under section 170(b)(1)(A)(i) of the Internal Revenue Code of 1986 (IRC), which pertains to churches, but rather under section 170(b)(1)(A)(vi) of the IRC, which pertains to publicly-supported organizations as described in section 170(c)(2) of the IRC, "organized and operated exclusively for

religious, charitable, scientific, literary, or educational purposes,” or for other specified purposes. This section refers in part to religious organizations, but to many types of secular organization as well.

Clearly, an organization that qualifies for tax exemption as a publicly supported organization under section 170(b)(1)(A)(vi) of the IRC can be either religious or non-religious. The burden of proof is on the petitioner to establish that its classification under section 170(b)(1)(A)(vi) of the IRC derives primarily from its religious character, rather than from its status as a publicly supported charitable and/or educational institution. The organization can establish this by submitting documentation which establishes the religious nature and purpose of the organization, such as brochures or other literature describing the religious purpose and nature of the activities of the organization. A list of the necessary documents appears in a memorandum from William R. Yates, Associate Director of Operations, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003):

- (1) A properly completed IRS Form 1023;
- (2) A properly completed Schedule A supplement, if applicable;
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization;
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The above list is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B), cited above.

Even before [redacted] memorandum was issued, the petitioner submitted copies of all the above documents, and protested that a tax-exempt organization could qualify as “religious” without being a “church.” Part II, line 1 of the Form 1023 instructs the petitioner to “Provide a detailed narrative description of all the activities of the organization – past, present, and planned.” The petitioner indicated “[w]e are a religious order, operating missionary training schools. We train people in evangelism, mercy ministries (i.e. medical relief) and in developmental + educational projects.” The petitioner listed no other activity, indicating that the petitioner’s sole purpose is operating these schools. This Form 1023 was newly prepared by the petitioner, apparently in direct response to the director’s inquiries regarding the petitioner’s tax exemption. The petitioner’s articles of incorporation contain a qualifying dissolution clause, and the petitioner’s promotional brochures leave little doubt that the purpose of the organization is overwhelmingly religious.¹

The director, in denying the petition, acknowledged the above evidence but maintained that the petitioner could not qualify as a religious organization because the IRS classified the petitioner under section 170(b)(1)(A)(vi) rather than section 170(b)(1)(A)(i) of the Internal Revenue Code. This finding, the sole stated ground for denial, is not permissible under Mr. Yates’ memorandum (which, in turn, derives from the controlling regulations).

On appeal, the petitioner submits what appears to be a copy of the petitioner’s initial Form 1023 (the one prepared for submission to the IRS, rather than the later version prepared for the director’s benefit). This form lists three principal activities of the organization: “conferences and seminars for leaders of various mission societies,” “training schools for potential missionaries and for support personnel,” and “various kinds of logistical support services for foreign missionaries.” While more detailed than the description previously

¹ The petitioner’s religious nature is also readily evident from its web site, <http://www.ywam.org>.

provided, this description nevertheless keeps the organization's focus squarely on Christian missionary training and mission projects.

The petitioner has adequately demonstrated that its tax exemption derives from the organization's religious character.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has met that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.