



U.S. Citizenship  
and Immigration  
Services



File: [Redacted] Office: CALIFORNIA SERVICE CENTER

Date: SEP 16 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)

IN BEHALF OF PETITIONER:



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, California Service Center, and is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a university that provides "Christian and Bible-centered post-secondary education." 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), in order to classify him as a Seminary Professor and Pastor. The director determined that the petitioner had not established that it is a qualifying tax-exempt religious organization.

The petitioner, through counsel, files a timely appeal.

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 as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 (IRC) derives from classification not under section 170(b)(1)(A)(i) of the IRC, which pertains to churches, but rather under section 170(b)(1)(A)(ii) of the Code. This section of the IRC pertains to:

[A]n educational organization which normally maintains a regular facility and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

The director denied the petition, stating:

This section is not the one relating to religious organizations . . . Therefore, the petitioner has not shown that they are tax-exempt as a religious organization . . . the petitioner appears to be ineligible to receive special immigrant classification for an prospective alien employees.

There are several classes of nonprofit organizations eligible for tax exemption under section 501(c)(3) of the IRC. Those organizations, which are classified or classifiable as "churches" pursuant to section 509(a)(1) and 170(b)(1)(A)(i) of the IRC, can generally be considered qualifying religious organizations for the purpose of special immigrant religious worker classification. However, qualifying as a religious organization "church" under section 170(b)(1)(A)(i) of the IRC is only one method of determining if the petitioner is a qualifying organization. Other organizations classified under section 170(b)(1)(A) of the

IRC may qualify if it can be established that this classification is due to religious factors and that they are organized for religious purposes and operate under the principles of a particular faith, rather than solely for education, charitable, scientific and other 501(c)(3) qualifying purposes.

Clearly, an organization that qualifies for tax exemption as an educational organization under section 170(b)(1)(A)(ii) of the IRC can be either religious or non-religious. The burden of proof is on the petitioner to establish that its classification under 170(b)(1)(A)(ii) of the IRC derives primarily from its religious character, rather than from its status as an 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. The necessary documentation, which is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B) cited above, is described 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 director, prior to denying the petition, made no effort to ascertain whether the petitioner's federal tax exemption derives from its religious character. The director simply denied the petition because the IRS did not classify the petitioner as a church under section 170(b)(1)(A)(i) of the IRC. This finding, the sole stated ground for denial, relies on an impermissibly narrow construction of the regulations. The director must, therefore, provide the petitioner with an opportunity to submit the materials listed above, and thereby demonstrate that its tax-exempt status derives primarily from its religious character.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.