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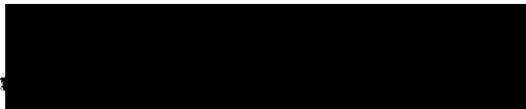
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Office: TEXAS SERVICE CENTER

Date: APR 05 2005

IN RE:

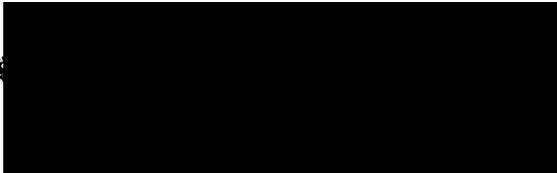
Petitioner:



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:



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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

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 hospital. 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 minister. The director determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization.

On appeal, counsel submits a brief and 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).

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 submitted a copy of a 1985 letter from the Internal Revenue Service (IRS) to Methodist Hospitals of Dallas (MHD) notifying the organization that had been granted a tax exemption under section 501(c)(3) of the Internal Revenue Code (IRC) as an organization described in section 170(b)(1)(A)(iii) of the IRC.

The record also contains copies of MHD's year 2001 Form 990, Return of Organization Exempt from Income Tax. A document included with the return as Part VIII states, in pertinent part:

The primary mission or purpose of Methodist Hospitals of Dallas ("MHD") is to serve people in defined service areas by meeting their health needs effectively and in a manner that reflects "a commitment to Christian concepts of life and learning" and in all ways merits continued identification with the United Methodist Church. Specifically, this mission is pursued by operating two general acute-care hospitals and other health care, service, education, and support programs needed by the communities served in North Central Texas. These are Methodist Medical Center . . . and Charlton Methodist Hospital, a 191-licensed-bed community hospital, providing primary and secondary care . . . The two hospitals are unincorporated divisions of MHD.

The record contains no evidence that the petitioning organization is a legal entity, separate and distinct from MHD. The evidence establishes that the beneficiary's prospective U.S. employer is MHD, and, for purposes of this petition, MHD will be considered as the petitioner. All references in this decision to the petitioner will refer to MHD.

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 section 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 that contains a proper dissolution clause and which specifies the purposes of the organization.

The director denied the petition because the petitioner is classified under section 170(b)(1)(A)(iii) of the IRC, rather than under section 170(b)(1)(A)(i). This finding, by itself, is deficient, because to equate "religious organizations" with "churches" relies on an overly strict reading of the statute and regulations.

The petitioner submitted evidence that the proffered position is within its "pastoral care department," which it describes as "an integral component of the healthcare provided by" the petitioning organization. In a Notice of Intent to Deny dated December 8, 2003, the director informed the petitioner that exemption under section 170(b)(1)(A)(iii) of the IRC pertains, not only to organizations operated exclusively for religious purposes, but also to organizations operated as hospitals or for medical research. The director informed the petitioner that it must establish that its exemption was based on its status as a religious organization and instructed the petitioner to submit evidence of its section 501(c)(3) certification, including a copy of IRS Form 1023.

On appeal, the petitioner submits a memorandum that specifies that an entity need not be classified under section 170(b)(1)(A)(i) of the IRC in order to qualify as a tax-exempt religious organization (Memorandum from William R. Yates, Associate Director of Operations for Citizenship and Immigration Services (CIS), *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003), hereafter “Yates Memorandum.”

The Yates Memorandum states, in pertinent part:

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 educational, charitable, scientific and other 501(c)(3) purposes.

In instances where the exemption letter from the IRS does not clearly indicate the basis for the exemption, the Yates Memorandum requires the following documentation to establish “the religious nature and purpose of the organization”:

- (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, and
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The Yates Memorandum does not state that the petitioner must provide one item from the above list. Rather, *all* of the listed documents, “at a minimum,” are necessary to establish that the entity has represented itself to the IRS as being primarily a religious organization, in instances where the religious nature of the exemption is not apparent from the IRS exemption letter.

The petitioner’s appellate submission includes a copy of the Yates Memorandum, demonstrating that the petitioner and counsel are, or reasonably should be, aware of its contents, including the above list (which the Yates Memorandum calls the “minimum” necessary evidence). The appellate submission does not, however, include all of the above documentation (for example, the petitioner failed to submit a copy of IRS Form 1023). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

It is overly restrictive to assert that only churches, classified under section 170(b)(1)(A)(i) of the IRC, can qualify as religious organizations. At the same time, the burden is on the petitioner to establish the religious character underlying the exemption. We stress here that each appeal must be adjudicated on its own merits, based on its

own individual record of proceeding. In this particular instance, the petitioner has not submitted anything from the IRS to establish the religious basis for the exemption, nor has the petitioner submitted the materials required in the Yates Memorandum (even though the petitioner possesses a copy of this memorandum, and the list that it contains). Whatever other documentation the petitioner may possess that would more clearly establish that the IRS considers the petitioner to be a religious organization, the petitioner did not choose to submit that documentation for consideration, either in response to the Notice of Intent to Deny or on appeal.

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.