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U.S. Citizenship
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Services

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CJ

FEB 22 2005

FILE:

WAC 03 225 55108

Office: CALIFORNIA SERVICE CENTER

Date:

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

SR Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a monastery. 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 pastor (Dharma master). The director determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization.

On appeal, counsel submitted 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.

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, 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 petitioner submitted a copy of a February 28, 2001 letter from the IRS, indicating that, in 1997, the petitioner was granted tax exempt status under section 501(c)(3) of the IRC as an organization described in section 509(a)(1) and section 170(b)(1)(A)(vi) of the IRC. The petitioner also submitted a copy of its articles of incorporation that state its purpose and contains the dissolution clause required by the IRS for tax-exempt status. On appeal, the petitioner submits a copy of an IRS letter modifying the petitioner's exempt status to that of an organization described under sections 509(a)(1) and 170(b)(1)(A)(i) of the IRC.

The evidence is sufficient to establish that the petitioner is a bona fide nonprofit religious organization, exempt from taxes as required by the statute and regulation. The record further establishes that the beneficiary is otherwise qualified for the benefits sought.

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 met that burden.

ORDER: The appeal is sustained. The petition is approved.