

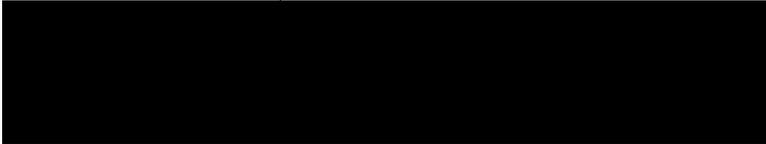
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAR 01 2005
WAC 00 161 50451

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:



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

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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.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 church. 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 its religious education director. The director determined that the beneficiary did not enter the United States for the purpose of performing qualifying religious work.

The sole issue raised in the director's decision concerns the beneficiary's entry into the United States. Section 101(a)(27)(C)(ii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii), requires that the alien seeking classification "seeks to enter the United States" for the purpose of carrying on a religious vocation or religious occupation. In this instance, the beneficiary entered the United States as a B-2 nonimmigrant visitor. Thus, the director concluded, the beneficiary did not enter the United States for the purpose of performing qualifying religious work.

This finding is not defensible. The AAO interprets the language of the statute, when it refers to "entry" into the United States, to refer to the alien's intended *future* entry *as an immigrant*, either by crossing the border with an immigrant visa, or by adjusting status within the United States. This is consistent with the phrase "*seeks to enter*," which describes the entry as a future act. While the beneficiary's failure to depart the United States upon expiration of his nonimmigrant status would raise questions of admissibility at the adjustment stage, under current law this does not inherently disqualify the beneficiary for the classification sought. We therefore withdraw this finding by the director.

The director appears to have denied the petition based solely on the beneficiary's prior B-2 nonimmigrant status, without giving any consideration to the petitioner's evidence or the beneficiary's eligibility for the classification. Issues that may require further attention include, for example, the petitioner's tax-exempt status and its ability to pay the beneficiary's proffered wage of \$1,500 per month. Regarding the tax-exempt status, the petitioner need not be classified as a "church" under section 170(b)(1)(A)(i) of the Internal Revenue Code, but the petitioner must nevertheless show that its status as a tax-exempt, non-profit corporation derives principally from its religious nature. Further information can be found 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).

Pursuant to 8 C.F.R. § 204.5(g)(2), evidence of ability to pay shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. According to a May 25, 1984 determination letter from the Internal Revenue Service, the petitioner is required to file Form 990, Return of Organization Exempt From Income Tax, if its annual gross receipts exceed \$25,000. The petitioner has offered the beneficiary a salary of \$18,000 per year, and considering that the beneficiary's salary is not the petitioner's sole expense, it appears likely that the petitioner's gross receipts would likely exceed this threshold amount. Forms 990 must be made available for public inspection, and therefore the petitioner must either provide these forms for the relevant years, or else demonstrate that the Internal Revenue Service has since reclassified the petitioning entity and no longer requires submission of Form 990.

We stress that the above discussion represents examples only, rather than the definitive result of an exhaustive review of the record. For the above reasons, 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.