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FILE: [Redacted] EAC 03 017 50461

Office: VERMONT SERVICE CENTER

Date: OCT 05 2006

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont 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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.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 residential school for mentally disabled children. 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 co-worker and curative educator. The director determined that the petitioner is not a qualifying tax-exempt religious organization.

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 (the Code), which pertains to churches, but rather under section 170(b)(1)(A)(ii) of the Code, which pertains to schools.

A private entity that qualifies for tax exemption as a school under section 170(b)(1)(A)(ii) of the Code 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)(ii) of the Code derives in large part from its religious character, rather than from its educational purposes alone.

The Code and its implementing regulations do not specifically define "religious organization," but IRS regulations indicate that the terms "religious organization" and "church" are not synonymous; for instance, the IRS regulation at 26 C.F.R. § 1.511-2(a)(3)(i) acknowledges the existence of "religious organizations" that are "not themselves churches." IRS Publication 1828, *Tax Guide for Churches and Religious Organizations*, also specifically states that the term "religious organizations" is *not* strictly limited to churches: "Religious organizations that are not churches typically include nondenominational ministries, interdenominational and ecumenical organizations, and other entities whose principal purpose is the study or advancement of religion." *Id.* at 2. The proper test, therefore, is not whether the intending employer is a church *per se*, but rather an entity whose principal purpose is the study or advancement of religion.

The organization can establish this by submitting documentation which establishes the religious nature and purpose of the organization, including brochures or other literature describing the religious purpose and nature of the activities of the organization. The necessary documentation 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 above list is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B), cited above. The memorandum specifically states that the above materials are, collectively, the “minimum” documentation that can establish “the religious nature and purpose of the organization.” Thus, for example, a petitioner cannot meet this burden by submitting only its articles of incorporation. That being said, it is important to note that item (2), Schedule A of Form 1023, is only required “if applicable.” If Schedule A is not applicable in a given instance, then the petitioner’s failure to submit Schedule A is not grounds for denial of that petition.

If the petitioner is still in possession of the Form 1023 by which it first gained recognition as a tax-exempt entity, the petitioner should provide a copy of that Form 1023 rather than a newly executed version in order to establish its eligibility at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Also, obviously, it is not enough merely for the petitioner to submit the documents listed above. The content of those documents must establish the religious purpose 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 classified the petitioner under section 170(b)(1)(A)(ii) rather than section 170(b)(1)(A)(i) of the Internal Revenue Code. This finding, the sole stated ground for denial, relies on a flawed and impermissible interpretation of the regulations. The director must, therefore, provide the petitioner with an opportunity to submit the materials outlined in that memorandum, and thereby demonstrate that its tax-exempt status derives primarily from its religious character.

We note that the petitioner claims that its religious nature derives from “Christian spiritual principles based on Anthroposophy and the principles of the educator and philosopher Rudolf Steiner.” The petitioner cites *Lindenberg and Camphill Village, Inc. v. U.S. Dept. of Justice*, 657 F.Supp. 154 (D.D.C. 1987), in which the court held that the Camphill Movement is a religious organization. The judge in that decision asserted that the Camphill Movement is “[b]ased on ‘anthroposophy’” and “focused toward ‘Christianizing’ the ordinary aspects of life for the mentally handicapped.” *Id.* at 155.

In an effort to determine whether the petitioner’s own literature describes the religious purpose and nature of the activities of the organization, the AAO visited the petitioner’s web site [REDACTED] that site contains the word “religious” only once, in a fairly general context, and indicates that the petitioner “enrolls children 5 years and older of any . . . creed.” No indication is given to potential clients that the students are to be “Christianized.” The only reference to Christianity is a bibliographic note in a student handbook.

The site also links to <http://www.anthroposophy.org>, which is the web site of the Anthroposophical Society in America. That web site contains a September 15, 2005 press release,<sup>1</sup> which declares that the plaintiff in a California lawsuit “failed to prove that anthroposophy is a religion for establishment clause purposes.” In

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<sup>1</sup> Available at <http://www.anthroposophy.org/PressReleases/Trial20050915.php> (visited September 21, 2006)

conjunction with that lawsuit, *PLANS, Inc. v. Sacramento City Unified School District et al.*, CIV. S-98-0266 FCD PAN, the Anthroposophical Society filed an *amicus curiae* brief<sup>2</sup> containing the following arguments:

The Society believes that a decision by this Court that adopts the plaintiff's position . . . that anthroposophy is a religion, would profoundly mischaracterize anthroposophy and cast the relationship of anthroposophy with Waldorf education, independent Waldorf teacher training academies, and several hundred independent entities which characterize themselves as Anthroposophical in a false light. . . .

Central to the plaintiff's argument is the allegation that "anthroposophy" rises to the legal definition of a "religion" for Establishment Clause purposes. The Society disputes this characterization and offers the Court this *amicus* brief to substantiate the Defendant School Districts' position that the Court should not answer in the affirmative the question "Is Anthroposophy a religion?". . .

The Statutes of the Society state emphatically that anthroposophy is not a religion. . . .

Without question, Anthroposophy . . . is manifestly not a "belief-system" of any kind.

If Anthroposophy is not a religion, then it is reasonable to ask the identity of the religious denomination to which the petitioning school is affiliated. If, on the other hand, the petitioner in this proceeding seeks to argue that Anthroposophy *is* a religion, then the petitioner must account for the contrary claim advanced by the Anthroposophical Society in federal court. We note that, in the litigation referenced above, it was in the Society's interest to deny that Anthroposophy is religious in character; in the present proceeding, it is in the petitioner's interest to claim the opposite.

The director relied upon flawed reasoning to find that the petitioner is not a qualifying petitioning organization. The director must therefore make a new determination to that effect. At the same time, if the Camphill movement, including the petitioning school, is founded on Rudolf Steiner's principles of Anthroposophy, and Anthroposophy, in turn, is not a religion (as the Society has recently argued in federal court), then the petitioner must identify the *religious* denomination with which it is affiliated. Given the claims of the Anthroposophical Society, any claim that Anthroposophy is a religious philosophy will necessarily be met with extremely skeptical scrutiny.

The petitioner's own promotional materials give barely any play to religious ideas, apart from vague references to "spirituality," and assert that students of "any . . . creed" are welcome; there is no advisory to the effect that these students will be educated on "Christian spiritual principles" upon their arrival.

A related issue necessarily surfaces when considering whether or not the petitioner qualifies as a religious entity. The definition of "religious occupation" at 8 C.F.R. § 204.5(m)(2) requires that a given occupation relate to a traditional religious function. Wholly secular functions, such as janitorial or secretarial duties, are excluded from the definition. The qualifications for these secular functions do not involve the specific creed or doctrine of any given faith. Traditional religious functions, however, require members of the particular faith. For such function, a Baptist church would hire a Baptist; a Reformed Jewish synagogue would employ a Reformed Jew; and so on.

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<sup>2</sup> Available at <https://www.anthroposophy.org/Announcements/getfile.php?bn=anboard&key=1091036814> (visited September 21, 2006).

This is in keeping with the regulations at 8 C.F.R. § 204.5(m)(3)(ii)(A) and the statute at section 101(a)(27)(C)(i) of the Act, both of which require the beneficiary to be, and to have been for two years, a member of the petitioner's religious denomination. The denomination in question must, of course, be identified; the petitioner cannot simply identify itself as a denomination and leave it at that. 8 C.F.R. § 204.5(m)(2) defines "religious denomination" as a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, religious congregations, or comparable indicia of a bona fide religious denomination.

The above issue is salient because of the question that arises when considering the position that the petitioner has offered to the beneficiary: What religious beliefs *must* a person hold, in order to qualify for the position of a co-worker and curative educator? It cannot suffice to state that certain beliefs are *preferred* for the position; one would not expect a Roman Catholic Church to resort to appointing a Presbyterian deacon if no qualified Catholic seeks the position. If one need not belong to a particular religion in order to work as a co-worker and curative educator, then it becomes very difficult to argue that the duties of a co-worker and curative educator nevertheless relate to a traditional religious function.

We note that the "Becoming a Resident Co-Worker" page of the petitioner's own web site<sup>3</sup> lists requirements such as English proficiency, but there is no indication that applicants must be a member of a specific religious faith.

Thus, while the director erred in the logic of the denial notice, the fundamental question – "Is the petitioner a religious organization, an organization affiliated with a religious denomination, or neither?" – remains unanswered. The petitioner must also show that only an individual of a particular religious background can perform the duties of the position offered to the beneficiary; otherwise, those duties cannot reasonably be deemed "religious functions."

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.

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<sup>3</sup> Available at <http://www.beaverrun.org/volunteer.asp> (visited September 21, 2006)