

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

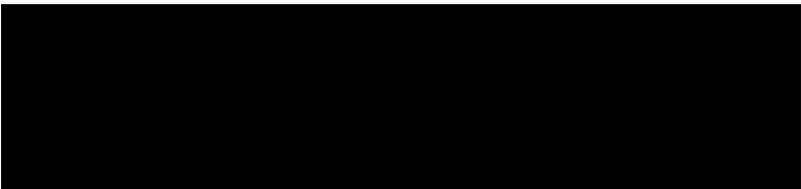
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



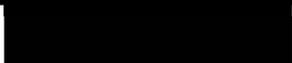
U.S. Citizenship  
and Immigration  
Services

C1

**PUBLIC COPY**



FILE:



Office: TEXAS SERVICE CENTER

Date:

SEP 07 2006

SRC 05 163 51702

IN RE:

Petitioner:

Beneficiary:



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:

SELF-REPRESENTED

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 Director, Texas Service Center, initially denied the employment-based immigrant visa petition for abandonment. Following the petitioner's motion, the director reopened the proceeding and denied the petition on the merits. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is identified as 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 a minister/church planter. The director determined that the petitioner had not established that it qualifies as a tax-exempt religious organization.

On appeal, the petitioner submits additional evidence and asserts that it has met its burden of proof.

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. . . . 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).

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.

The petitioner's initial submission did not contain the required evidence regarding the petitioner's tax status. Therefore, the director issued a request for evidence (RFE) on June 14, 2005. In this RFE, the director quoted 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). This memorandum indicates that, if the petitioner cannot produce an exemption letter from the Internal Revenue Service (IRS) or evidence of recognition under a group exemption, then the petitioner must submit documentation that includes, "at a minimum," the following evidence:

- (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." Therefore, a petitioner cannot meet this burden by submitting only some of the above documents.

The petitioner submitted a timely response to this notice, clearly demonstrating that the petitioner received the notice (and its incorporated list of required documents). The following is the petitioner's list of the documents submitted:

- Our Bank Reconciliation Detail of 7/31/2005
- Our Quarterly Federal Tax Return dated 7/28/05
- A Letter A [sic] Stating Temple Baptist Church Membership
- Letter from Secretary of State stating our Corporation Status
- Our Consumer's Certificate of Exemption

The petitioner did not explain why these documents should be construed to satisfy the documentary requirements spelled out Mr. Yates' memorandum and repeated in the director's notice, nor did the petitioner otherwise explain the omission of the required documents. We note that the Consumer's Certificate of Exemption refers to exemption from Florida state sales and use tax, not federal income tax.

The director denied the petition, stating: "The petitioner did not submit an IRS 501(c)(3) certificate or such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3)."

On appeal, Rev. Griffin cites the following definition from 8 C.F.R. § 204.5(m)(2):

*Bona fide nonprofit religious organization in the United States* means an organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations, or one that has never sought such exemption but establishes to the satisfaction of the Service that it would be eligible therefor if it had applied for tax exempt status.

The two clauses of the above definition correspond, respectively, to 8 C.F.R. §§ 204.5(m)(3)(i)(A) and (B). Rev. Griffin observes that churches are not required to apply for recognition of tax-exempt status. The issue, however, is not whether IRS policy requires churches to apply for recognition, but rather, whether the petitioner has provided the documentation necessary to satisfy the IRS' requirements, thereby satisfying 8 C.F.R. § 204.5(m)(3)(i)(B). Rev. Griffin asserts that the petitioner has submitted the necessary evidence, and that the petitioning entity possesses all the necessary characteristics to qualify as a church under section 501(c)(3) of the Internal Revenue Code.

The petitioner acknowledges that it is required to submit 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, but the petitioner evidently disagrees with the director as to what comprises "such documentation." This question is not open to the interpretation or discretion of the petitioner. Rather, the director already provided the petitioner with a list of the required documents, as enumerated in Mr. Yates' memorandum.

The petitioner submits, on appeal, a copy of its articles of association. This document represents an organizing instrument containing a qualifying dissolution clause. The petitioner does not explain why this document did not accompany the response to the RFE, which expressly indicated that such a document was required. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency pursuant to 8 C.F.R. § 103.2(b)(8), the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted this evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.*

Even if the articles of association had been timely submitted at the time the director requested a copy of the petitioner's organizing instrument, the petitioner would not have fully satisfied the requirements. As explained elsewhere in this decision, the IRS will not issue a recognition letter to an entity that does not submit a completed Form 1023, and any entity that claims to be a church must also submit that form's accompanying Schedule A. The record does not contain these required documents, and the petitioner has never claimed to have submitted them. Therefore, the petitioner has failed to submit all of the documentation required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code as it relates to religious organizations. Given the petitioner's failure to submit the required documentation following a specific request for such evidence, we find that the director properly found that the petitioner had failed to establish that it had satisfied the evidentiary requirements at 8 C.F.R. § 204.5(m)(3)(i)(B), as clarified in Mr. Yates' memorandum.

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.