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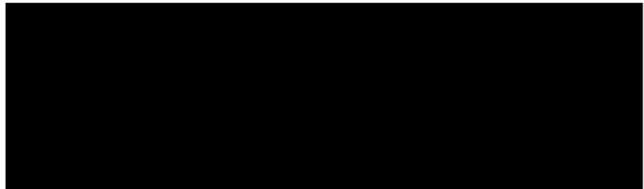
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date:

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Petitioner:



Beneficiary:

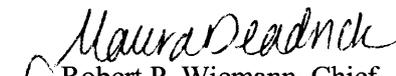
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



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, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Buddhist temple. 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 monk. The director determined that the petitioner had not submitted the necessary documentation to establish that is a qualifying tax-exempt religious organization.

On appeal, counsel indicates that further evidence will be forthcoming within 30 days. To date, years after the filing of the appeal, the record contains no further substantive submission from the petitioner. A June 6, 2007 inquiry from the AAO concerning the status of the supplementary submission apparently went unanswered. We therefore consider the record to be complete as it now stands.

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).

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 includes documentation showing that the petitioner is incorporated as a non-profit "Ecclesiastical Corporation" in Michigan. These documents relate to state, rather than federal, tax-exempt status. [REDACTED] Presiding Priest at the petitioning temple, asserts that the petitioning "temple . . . is a bona fide nonprofit religious organization in the U.S., and is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986." A priest's attestation, however, is not *prima facie* evidence of qualifying tax-exempt status.

On February 12, 2003, the director issued a request for evidence (RFE) instructing the petitioner to submit either a determination letter from the Internal Revenue Service (IRS), or:

Evidence which would be required by the Internal Revenue Service to establish the organization's eligibility for exemption under Section 501(c)(3) of the Internal Revenue Code of 1986 **as it pertains to religious organizations**. Such documentation must include, at a minimum, a completed IRS Form 1023, the Schedule A attachment which applies to churches, and a copy of the organizing instrument of the church that contains a proper dissolution clause and which specifies the purposes of the organization.

(Emphasis in original.) The director stated that the petitioner's "response must be received in this office by **May 7, 2003**,"<sup>1</sup> and that the petitioner "must submit all of the evidence at one time. . . . No extension of the period allowed to submit evidence will be granted." The last quoted sentence derives from 8 C.F.R. § 103.2(b)(8), which states specifically and without exception that "[a]dditional time may not be granted" to respond to a request for evidence.

Just before the response deadline, the petitioner submitted materials relating to its state (not federal) tax-exempt status. The petitioner also submitted a letter from a representative of Standard Federal Bank, Cassopolis, Michigan. The letter reads, in part:

March 11, 2003

IRS Stop 540A

To Whom This May Concern:

Please reactivate the EIN# [REDACTED] for [the petitioning temple].

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<sup>1</sup> We note that, pursuant to 8 C.F.R. § 103.5a(b), the response period would have ended on Monday, May 12, 2003, not Wednesday, May 7, 2003. This error did not prejudice the outcome of the RFE, however, as counsel indicated on May 5, 2003 that a complete response would not be ready until well after May 12.

It is not clear how, or why, the petitioner's employer identification number was inactive in 2003, such that it would be necessary to "reactivate" it.

Beyond the above materials, the petitioner's response included a letter from counsel, who stated: "the temple has retained tax counsel to complete an IRS form 1023 with a schedule A attachment. We will submit same with a copy of the RFE in approximately 2 weeks, and seek an extension of the RFE date to facilitate same." Counsel did not explain why the 12-week response period was not sufficient time to complete the Form 1023 application. More importantly, counsel did not acknowledge the director's prior instructions to submit the entire response at one time, within the time permitted. As noted above, 8 C.F.R. § 103.2(b)(8) states categorically and without exception that there can be no extension to the 12-week response period for an RFE. We note, further, that the record does not contain any submission from mid-May 2003, which is when counsel claimed that the petitioner would submit the IRS Form 1023 and accompanying documents.

The director denied the petition on September 19, 2003, stating that the petitioner had failed to submit the required evidence of federal tax-exempt status. On appeal, counsel argues that "the Petitioner is tax exempt under the law of its state of organization" and, therefore, "the Petitioner is not otherwise required under law to seek the 501(c)(3) certificate." The statute and regulations, however, plainly require evidence of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code, not evidence of exemption from state or local taxes. Nowhere does the law indicate that evidence of state tax exemption is presumptive evidence of federal tax exemption.

The petitioner's submission on appeal includes a fax copy of a completed IRS Form 1023, Application for Recognition of Exemption, dated October 20, 2003 (which shows that it was not completed within two weeks of counsel's May 5, 2003 request for a two-week exemption). The director had previously informed the petitioner that this document had to be submitted during the 12-week RFE response period.

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, 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 the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Despite being asked for the Form 1023 in February, the petitioner did not execute the Form 1023 until October, after the petition had already been denied and the appeal filing deadline was only a few days away. The new Form 1023 may be considered in the context of a new petition, but in the present proceeding established case law prevents its consideration on appeal. Under the circumstances, the AAO need not and does not consider the sufficiency of the IRS Form 1023 submitted 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.