



U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **SEP 12 2007**
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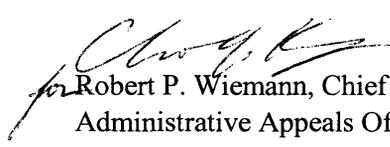
IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:
[REDACTED]

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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner identifies itself as “an entity that is part of the worldwide Ukrainian Autocephalous Orthodox 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 priest. The director determined that the petitioner had not established that it qualifies as a tax-exempt religious organization.

On appeal, the petitioner submits a brief from counsel and various exhibits.

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 seeking to employ the beneficiary 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.

In a letter accompanying the petition, [REDACTED] states that the petitioner “has demonstrated in the letter submitted with this petition that it qualifies for 501(c)(3) status under the IRA [sic].” The letter thus mentioned is not from the Internal Revenue (IRS). Rather, it is a copy of a previous letter from [REDACTED], asserting that the petitioner qualifies for 501(c)(3) tax-exempt status.

On January 8, 2007, the director issued a request for evidence (RFE), instructing the petitioner to submit either an “IRS 501(c)(3) Tax Exempt Certification” or “at a minimum, a completed IRS Form 1023, the Schedule A supplement that applies to churches, and a copy of the organizing instrument of the church that contains a proper dissolution clause and that specifies the purpose of the organization.”

In response, the petitioner submitted copies of previously submitted documents, including the petitioner’s articles of incorporation [REDACTED] once again described, in a letter, “how our religious organization qualifies for 501(c)(3) status,” and stated: “We have also included the IRS Form 1023 Schedule A.” The record, however, contains no Form 1023 Schedule A. The petitioner did not submit, or claim to submit, the Form 1023 itself (to which Schedule A is a supplemental attachment).

The director denied the petition on May 19, 2007, stating that the petitioner had failed to submit the evidence that the director had specifically requested in the RFE. The director stated: “the petitioner claimed to include the IRS Form 1023 Schedule A, but no such document was submitted.” On appeal, counsel asserts that the petitioner has already explained, in letters, how the petitioner qualifies as a tax-exempt religious organization. Counsel does not explain how letters of this kind satisfy the documentary requirements of 8 C.F.R. § 204.5(m)(3)(i) and its subsections. Counsel also states: “while not required, a draft of Schedule A of Form 1023 was completed to demonstrate the Petitioner’s qualifications and is enclosed herewith.” Counsel does not specify when the petitioner prepared this “draft,” nor does counsel claim that the petitioner had previously submitted the Schedule A in response to the RFE. Counsel merely asserts that the “draft of Schedule A” now exists. A copy of this document is in the record as appellate exhibit 4.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence in response to the RFE and now submits it on appeal. The AAO will not consider this untimely submission for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988).

With regard to counsel’s claim that Schedule A is “not required,” 8 C.F.R. § 204.5(m)(3)(i)(B) clearly indicates that, when the intending employer is unable to provide IRS certification of its claimed tax-exempt status, the petitioner must submit “[s]uch documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3).” One of the documents that the IRS would require from a church is Schedule A of IRS Form 1023. Also, the IRS would require not only Schedule A, but IRS Form 1023 itself. Because Form 1023 is the application for recognition of tax-exempt status, clearly that form is among the documentation that the IRS requires to establish eligibility.

The petitioner submits a copy of IRS Publication 1828, *Tax Guide for Churches and Religious Organizations*. That publication indicates that churches are not required to apply for IRS recognition because they “a

automatically considered tax exempt” (p. 3). It also specifies, however, that if a church chooses to apply for IRS recognition, the church “must use Form 1023” (p. 4). We acknowledge the automatic exemption clause, but 8 C.F.R. § 204.5(m)(3)(i) does not indicate that a church can establish tax-exempt status *for immigration purposes* simply by asserting that it is a church and, therefore, presumptively and automatically tax-exempt. There must be a mechanism for distinguishing between entities that have no IRS recognition because they are churches (and therefore need not apply), and entities that have no IRS recognition because they are not churches (and therefore cannot apply successfully). This is not to say that the petitioner in this proceeding is not a church; only that the petitioner has failed to meet its burden of proof by submitting the documentary evidence that the regulations require.

We note that the automatic exemption applies only to churches; other religious organizations will generally not be considered tax-exempt unless they file IRS Form 1023 and otherwise follow the necessary procedures. Therefore, such organizations will be in possession of IRS certification, thereby satisfying the documentary requirements of 8 C.F.R. § 204.5(m)(3)(i)(A). This means that the provisions of 8 C.F.R. § 204.5(m)(3)(i)(B) can only apply to churches, because only churches can claim tax-exempt status without producing an IRS determination letter to that effect. If a church with no determination letter were required only to invoke the automatic exemption provision, then the provisions of 8 C.F.R. § 204.5(m)(3)(i)(A) would never have effect. The AAO interprets the regulations as having been promulgated for some meaningful purpose and effect. Therefore, the petitioner is subject to the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A) and cannot meet these requirements simply by claiming that it does not have to meet them.

Beyond the decision of the director, another evidentiary deficiency is evident from the AAO’s review of the record. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

8 C.F.R. § 204.5(m)(4) requires the prospective employer to state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration). 8 C.F.R. § 204.5(g)(2) requires the petitioner to submit evidence that the prospective United States employer has the ability to pay the proffered wage. Here, the petitioner has simply asserted that the Patriarch, in Kiev, Ukraine, controls all church funds and will ensure the beneficiary’s continued support. The record does not contain anything from denominational authorities in Kiev to confirm this arrangement. Therefore, the petitioner has not established its financial ability to support the beneficiary.

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.