U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: AUG 25 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: 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.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a "Christian counseling center." 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 licensed professional counselor/intake counselor. The director determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization.

On appeal, counsel submits a brief and additional documentation.

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 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).

The regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

> (3) *Initial evidence*. Unless otherwise specified, each petition for a religious worker must be accompanied by:
>
> (i) Evidence that the organization qualifies as a nonprofit organization in the form of either:
>
> (A) Documentation showing that it is exempt from taxation in accordance with § 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 § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

The petitioner submitted a February 7, 1978 letter from the Internal Revenue Service (IRS), informing the petitioner that it had been granted tax-exempt status as an organization as described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Internal Revenue Code (IRC). The director determined that the petitioner had not established it was a bona fide religious organization pursuant to 8 C.F.R. § 204.5(m)(3)(i) in that it had failed to establish it held tax-exemption under section 170(b)(1)(A)(i) of the IRC.

On appeal, counsel argues that the Citizenship and Immigration Services (CIS) interpretation of the statute is erroneous in that the statute and regulation also apply to religious organizations other than churches. Counsel quotes section 170(b)(1)(A)(vi) of the IRC as it defines an organization under that section as one "which normally receives a substantial part of its support (exclusive of its charitable, educational, or other purpose or function constituting the basis of its exemption under section 501(a) from a governmental unit referred to in subsection (c)(1) or from direct or indirect contributions from the general public." Clearly, section 170(b)(1)(A)(vi) may refer to organizations that have purposes other than religious in nature.

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the IRS is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under § 501(c)(3) of the IRC of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement (if applicable) which applies to churches, and a copy of the organizing instrument of the organization which contains a proper dissolution clause and which specifies the purposes of the organization.

On appeal, counsel submits a letter from [redacted] Associate Director of Operations for CIS, who clarifies the documentary evidence needed as an alternate method of proving tax-exempt status as a religious organization when the petitioning entity does not have a letter from the IRS specifically granting tax-exempt status as a religious organization.

Although acknowledging the alternative means of proof, however, counsel submitted no additional evidence pursuant to the regulation. The record contains no evidence indicating that the petitioner is covered by a group tax-exemption. The petitioner also failed to submit any of the documentation described in the regulation at 8 C.F.R. § 204.5(m)(3)(i)(B). Although the petitioner submitted a copy of its by-laws, it does not submit a copy of its articles of incorporation containing the proper dissolution clause required by the IRS or a completed IRS Form 1023. The evidence of record does not establish that the petitioner has tax-exemption as a religious organization.

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.