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, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is an "inter-denominational missionary organization." 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 missionary/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 November 27, 1996 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 petitioner also submitted a copy of its 1992 "Application for Amendment of Eleemosynary Charter" filed with the state of South Carolina. The Application sought to amend the petitioner's Articles of Incorporation to include the dissolution clause required by the IRS for section 501(c)(3) status. The petitioner also submitted a copy of its 2000 Form 990, Return of Organization Exempt From Income Tax, which reflects its primary exempt purpose as "spreading the gospel of Jesus Christ." 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.

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.

With the appeal, counsel submits a letter from [redacted] Associate Director of Operations for Citizenship and Immigration Services (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.

On appeal, the petitioner submitted a copy of the Form 1023, Application for Recognition of Exemption, that it filed in November 1991 with the IRS. The petitioner also submitted a copy of its complete Articles of Incorporation that it included with the Form 1023, a copy of its 2002 Form 990, and a brochure explaining its purpose.

We find the evidence sufficient to establish that the petitioner is a non-profit religious organization exempt from taxation under section 501(c)(3) of the IRC.

Nevertheless, the case may not be approved as the record now stands, and it will be remanded to the director to request further evidence and to enter a new decision.

The director should address whether the petitioner has established that the position qualifies as that of a religious worker.

The regulation at 8 C.F.R. § 204.5(m)(2) offers the following definition of a "religious occupation":

> *Religious occupation* means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions perform services that are directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

CIS therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The petitioner states:

> The job requires contacting international students and members of the international community on local college campuses and developing relationships with [them] through friendship and hospitality activities. The missionaries/counselor will be expected to develop and lead evangelistic bible studies, ... invite internationals to Hospitality House events and Christian activities sponsored by [the petitioner] and local churches, and generally encourage internationals to attend local churches where they can best be served.

The evidence submitted does not clearly establish that the duties of the proffered position are not primarily secular in nature. The petitioner should be given an opportunity to clarify the religious nature of the job.

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 AAO for review.