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

C#1

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JUL 13 2004

IN RE: Petitioner: [redacted]
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:

[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 on appeal. The appeal will be dismissed.

From the circumstances under which the petitioner has contested the denial of the petition, it is not immediately clear whether the petitioner has filed a motion (which would be under the director's jurisdiction) or an appeal (which would be under the AAO's jurisdiction). Because of this uncertainty, and because the director has forwarded the matter to the AAO for review, we will consider the filing to be an appeal, and we will render a decision on the merits accordingly.

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, 8 U.S.C. § 1153(b)(4), to perform services as a monk. The director determined that the petitioner had not established that it qualifies as a tax-exempt religious organization, or that the beneficiary entered the United States for the purpose of working as a monk.

On appeal, the petitioner submits new documents relating to its recent designation as a tax-exempt church.

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).

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 contained no documentation from the Internal Revenue Service (IRS) to establish a qualifying tax exemption. Therefore, on March 23, 2003, the director instructed the petitioner to "[s]ubmit a copy of the IRS's 501(c)(3) certification for the petitioning organization including the IRC 170 sub-classification, and actual request for certification Form IRS 1023 or evidence that the petitioning organization is under an umbrella of a [qualifying] parent organization."

In response to this notice, the petitioner has submitted documentation of exemption from *state* taxes in North Carolina, but the only documentation in the record from the IRS is a letter notifying the petitioner of its newly-assigned Employer Identification Number. This document does not establish or recognize the petitioner's tax-exempt status. Indeed, the last paragraph of the letter contains instructions on how to apply for such status.

The director denied the petition because the petitioner had not submitted the required documentary evidence of a qualifying tax exemption. On appeal, counsel devotes a considerable portion of the appellate brief to issues that did not figure in the director's decision, for instance, the assertion that a Buddhist monk is a qualifying religious worker.

Turning to the tax exemption issue, counsel correctly observes that, pursuant to 8 C.F.R. § 204.5(m)(3)(i)(B), an organization need not establish that the IRS *has* recognized it as tax-exempt, only that it *qualifies* for such exemption. The regulation cited by counsel, however, requires the petitioner to submit "[s]uch documentation as is required by the Internal Revenue Service to establish eligibility for exemption." This documentation includes IRS Form 1023, a document that the director plainly identified in the March 24, 2003 request for evidence.

The regulations state that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, *as of the time the petition is filed. See* 8 C.F.R. §§ 103.2(b)(8) and (12). 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). As described above, the petitioner's response to the director's notice did *not* include Form 1023, nor did it otherwise include such documentation as is required by the IRS to establish eligibility for exemption. Thus, the petitioner failed to respond to a request for specific documentation.

On appeal, the petitioner submits a new determination letter from the IRS, dated June 17, 2003, showing that the IRS has classified the petitioner as a qualifying tax-exempt church. Counsel asserts that this new letter demonstrates that the petitioner is a qualifying organization, and that therefore the petitioner has overcome the chief grounds for denial.

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). We emphasize that the director did not request some vague class of documentation, but rather specific documents (such as IRS Form 1023), leaving no ambiguity as to what documents were required. 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.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be dismissed.

We note that the IRS determination letter was not issued until two weeks after the director denied the petition. The appeal also includes documents showing that the petitioner amended its articles of incorporation to include a qualifying dissolution clause (which the IRS requires for a qualifying tax exemption). The petitioner filed the amendment on January 29, 2003. Thus, as of the petition's filing date on May 2, 2002, the petitioner did not yet meet the requirements for classification as a qualifying tax-exempt organization. The petitioner only became eligible for exemption several months after the filing date. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to our legal and regulatory requirements. *See Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998).

For the above reasons, while the June 17, 2003 IRS determination letter and amended articles of incorporation can properly be considered in the context of a newly-filed petition, we cannot consider it to establish eligibility in the current proceeding. The salient facts do not demonstrate that the petition could have been approved at the time of filing in May 2002.

The other issue raised in the director's decision concerns the beneficiary's entry into the United States. Section 101(a)(27)(C)(ii)(III) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(III), requires that the alien seeking classification "seeks to enter the United States" for the purpose of carrying on a religious vocation or religious occupation. In this instance, the beneficiary entered the United States under a B-1 nonimmigrant visitor's visa. Thus, the director concluded, the beneficiary did not enter the United States solely for the purpose of working as a monk.

This finding is not defensible. The AAO interprets the language of the statute, when it refers to "entry" into the United States, to refer to the alien's intended *future* entry *as an immigrant*, either by crossing the border with an immigrant visa, or by adjusting status within the United States. This is consistent with the phrase "*seeks* to enter," which describes the entry as a future act. We therefore withdraw this particular finding by the director.

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.

The director's decision was based on two findings, one of which we have withdrawn, the other of which the petitioner has overcome, but too late to affect eligibility in this particular proceeding. Therefore, the dismissal of this appeal is without prejudice to any future filing of a new petition by the petitioner on the beneficiary's behalf.

ORDER: The appeal is dismissed.