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

U.S. Citizenship and Immigration Services

C-1

[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.

We note that there is no evidence that counsel participated in the preparation of the appeal. Nevertheless, absent evidence that counsel has ceased to represent the petitioner, counsel remains the attorney of record.

The petitioner is a 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, 8 U.S.C. § 1153(b)(4), to perform services as a worship pastor. The director determined that the petitioner had not established that it possesses, or qualifies for, federal tax exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

On appeal, the petitioner argues that churches are automatically considered to be tax-exempt, and that, therefore, no further documentation should be necessary.

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)(2) defines a "bona fide nonprofit religious organization in the United States" as an organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations, or one that has never sought such exemption but establishes to the satisfaction of Citizenship and Immigration Services (CIS) that it would be eligible therefor if it had applied for tax exempt status. As regards how the organization could establish this to the satisfaction of CIS, 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 did not contain documentation to satisfy either part (A) or (B) of the above regulations. Therefore, the director instructed the petitioner to "[s]ubmit a copy of the IRS's 501(c)(3) certification for the petitioning organization" and a copy of IRS Form 1023, which is the application for recognition of tax-exempt status. In response to this notice, the petitioner has submitted numerous documents, but no recognition letter, no Form 1023, nor any other documentation required by 8 C.F.R. § 204.5(m)(3)(i)(A) or (B). The petitioner has submitted a copy of IRS Publication 557, which indicates that churches are presumed to be tax-exempt even if they do not file Form 1023. The petitioner has also submitted documentation regarding exemption from *state* taxes, which is not relevant for our purposes.

The director denied the petition, based on the petitioner's failure to provide required documentation. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). *See also* 8 C.F.R. § 103.2(b)(12), which calls for the denial of a petition when the petitioner's response to the director's request for evidence does not establish eligibility as of the date of filing. The director stated that the IRS is responsible for determinations regarding tax exemptions, and internal IRS policies do not shift that responsibility to Citizenship and Immigration Services.

On appeal, the petitioner argues that, pursuant to IRS Publication 1828 (submitted on appeal), churches are automatically presumed to be exempt from taxation, and therefore churches need not apply for recognition of that exemption. This argument is beside the point. The regulations at 8 C.F.R. § 204.5(m)(3)(i)(A) and (B) indicate that the petitioner must submit either evidence of exemption, or such documentation as would be necessary to establish eligibility for exemption. We cannot accept IRS Publication 1828 as evidence of exemption. While that publication states that churches, as a class, are exempt, it does not specifically mention the petitioner or any other particular church. If we were to accept IRS Publication 1828 as proof of exemption, then any organization or corporation could simply *claim* to be a church, offering no proof whatsoever. The regulations requiring proof of tax-exempt status would be meaningless and redundant.

We note that the IRS itself recommends that churches obtain formal determination letters. For instance, page 23 of Publication 557, submitted by the petitioner, indicates "[a]lthough a church . . . is not required to file Form 1023 to be exempt from federal income tax or to receive tax deductible contributions, the organization may find it advantageous to obtain recognition of exemption." Page 4 of Publication 1828 recommends recognition "because such recognition assures church leaders, members and contributors that the church is recognized as exempt and qualifies for related tax benefits."

The regulations do not require evidence that *churches* are tax-exempt, but rather evidence that the petitioner, individually, is a *tax-exempt church*. The regulations indicate that the petitioner can meet this burden by submitting either (A) a copy of an IRS determination letter, or (B) the documentation required to persuade IRS of the entity's eligibility for taxation. This documentation includes, for example:

(1) A properly completed IRS Form 1023;
(2) A properly completed Schedule A supplement, if applicable;

(3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization.

The petitioner does not submit Form 1023 or Schedule A. Rather, the petitioner provides some information which, the petitioner contends, the petitioner would have put on Form 1023 and Schedule A, had the petitioner chosen to file those forms with the IRS.

We repeat the director's assertion that the IRS, rather than any immigration authority, is responsible for determining and recognizing the tax-exempt status of a church or other organization, and that we are not obliged to presume that the petitioner is tax-exempt based solely on the petitioner's own claim that the IRS *would* so recognize the petitioner if asked to do so. This proceeding is not about collecting taxes from the petitioner, but about a request for immigration benefits for an alien beneficiary, and the fact that the petitioner has complied with IRS policy does not nullify or supersede the petitioner's failure or refusal to comply with immigration regulations.

From the petitioner's comments on appeal, the petitioner is demonstrably aware of the documentary requirements to establish eligibility for tax exemption under 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations. The petitioner has, nevertheless, elected not to comply with those requirements. The director duly put the petitioner on notice regarding documentary requirements, and the petitioner has not met those requirements.[1]

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.

[1] We note that any future submission of Form 1023, an IRS determination letter, or any other documentation that the petitioner should have submitted well before this point, will not compel the reversal of the present decision. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). Such documentation should, instead, accompany a newly-filed petition.