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

U.S. Citizenship and Immigration Services

C1

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: NOV 03 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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a "mission 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 an education director. The director determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization. The director also determined that the petitioner had not established that it had the ability to pay the beneficiary the proffered wage.

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 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).

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.

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 Internal Revenue Service (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 section 501(c)(3) of the Internal Revenue Code (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, and a copy of the organizing instrument of the organizing which contains a proper dissolution clause and which specifies the purposes of the organization.

The petitioner submitted a copy of a December 9, 1994 advance ruling letter from the IRS granting it tax-exempt status under section 501(c)(3) of the IRC as an organization described under sections 509(a)(1) and 170(b)(1)(A)(vi) of the IRC. The advance ruling was scheduled to end on December 31, 1998. The petitioner also submitted a copy of its Articles of Incorporation containing the dissolution clause required by the IRS, a copy of a letter from the California Franchise Tax Board exempting the petitioner as a religious organization from state franchise and income tax, and a copy of a business certificate indicating that the petitioner is listed as a marital arts studio. The petitioner failed to submit a copy of a completed IRS Form 1023 and the other documentation required by the IRS in making its tax exempt determination as required by 8 C.F.R. § 204.5(m)(3)(i)(B).

On appeal, counsel asserts that the IRS has "treated and continues to classify [the petitioner] as a religious organization, exempt from taxation in accordance with Section 501(c) of the Internal Revenue Code." Counsel submits no new documentation on appeal to establish that the petitioner was granted tax-exempt status by the IRS following the expiration of the advance-ruling period. Further, although the advance ruling granted the petitioner tax-exempt status, the letter does not specify that the exemption was as a religious organization.

Additionally, the petitioner has not established that it is a religious denomination. The regulation at 8 C.F.R. § 204.5(m)(2) defines religious denomination as:

> [A] religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship and religious congregations, or comparable indicia of a bona fide religious denomination.

The petitioner does not state its religious denomination or affiliation. The record does not indicate that the petitioner has any form of ecclesiastical government, form or place of worship, or that it has a creed or statement of faith. Although the petitioner states that the beneficiary's duties will include starting new churches, the evidence does not reflect that the petitioner has any churches in existence. The petitioner has not submitted any comparable evidence as required by the regulation that it is a bona fide religious denomination.

The evidence is insufficient to establish that the petitioner is a bona fide nonprofit religious organization or that it is exempt from taxation as a religious organization, as required by the statute and regulation.

A petitioner must also demonstrate its ability to pay the proffered wage.

The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part, that:

> Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

The petition was filed on September 4, 2002. Therefore, the petitioner must establish that it had the ability to pay the proffered wage continuously as of that date. The petitioner stated that it would pay the beneficiary $1,500 per month as salary.

With the petition, the petitioner submitted copies of Form W-2, Wage and Tax Statement, that it issued to the beneficiary in 2000 and 2001, and copies of the beneficiary's Form 1040, U.S. Individual Income Tax Return, for the same periods.

On April 3, 2003, in a request for evidence (RFE), the director instructed the petitioner to provide evidence of its ability to pay the beneficiary a wage as of the time the priority dated was established. In response, the petitioner submitted a copy of the beneficiary's Form W-2 and Form 1040 for 2002, which indicates the petitioner paid the beneficiary $18,000 for the year. On appeal, the petitioner submits a copy of its 2002 annual report.

The evidence submitted is sufficient to establish the petitioner's ability to pay the proffered wage. However, as the petitioner has not established that it is a bona fide nonprofit religious organization that is exempt from taxation as a religious organization, the petition may not be approved.

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.