U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[redacted]

NOV 23 2004

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a Zoroastrian 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 priest. The director determined that the petitioner had not established its qualifying tax-exempt status.

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 . . . ; 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.

With the initial filing of the petition, the petitioner has submitted documentation regarding the petitioner's *state* tax-exempt status. Because this documentation does not establish the petitioner's *federal* tax-exempt status, the director issued a notice, stating, in part:

> Provide evidence that the U.S. religious organization qualifies as a nonprofit religious organization in the form of either:
>
> (a) The Internal Revenue Service – IRS 501(c)(3) Tax Exempt Certification; **or**
> (b) Such documentation as is required by the Internal Revenue Service to establish eligibility under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

> If you choose option (b) the documentation should include, at a minimum, a completed Form IRS 1023, the Schedule A supplement that applies to churches, and a copy of the organizing instrument of the church that contains a proper dissolution clause and that specifies the purpose of the organization.

In response to this notice, the petitioner submitted additional information regarding its *state* tax-exempt status. The petitioner submitted nothing from the Internal Revenue Service.

The director denied the petition, stating that despite the request for a copy of the petitioner's IRS Form 1023 and other documents, the petitioner has submitted none of the requested documents. The director also asserted that, in a separate proceeding, the petitioner had submitted documentation showing that the IRS has classified the petitioner not under section 170(b)(1)(A)(i) of the Internal Revenue Code of 1986 (the Code), which pertains to churches, but rather under section 170(b)(1)(A)(vi) of the Code, which pertains to publicly-supported organizations as described in section 170(c)(2) of the Code, "organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes," or for other specified purposes. The director asserted that organizations classified under section 170(b)(1)(A)(vi) of the Code cannot qualify as religious organizations. The record does not contain a copy of the IRS letter referenced by the director.

On appeal, the petitioner states "we need a little time to get the documents itemized in the decision." The director had already given the petitioner twelve weeks to assemble and submit those same documents (including Form 1023 which, by law, must be made available for public inspection). 8 C.F.R. § 103.2(b)(8) indicates that no extensions shall be granted beyond this twelve-week period.

In a subsequent submission, the petitioner submits a copy of its Form 990 Return of Organization Exempt from Income Tax for 2002, but the petitioner still has not submitted the Form 1023 that the director had repeatedly indicated was required. Any attempt to submit that document at this late date will not overcome the director's decision. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

The petitioner correctly argues, on appeal, that classification under section 170(b)(1)(A)(vi) of the Code is not inherently disqualifying. That being said, however, not every organization classified under section 170(b)(1)(A)(vi) of the Code is a religious organization. The petitioner still bears the burden of demonstrating that the IRS issued that classification due to the religious nature of the organization. In order to meet this burden, the petitioner must submit IRS Form 1023 and the other applicable documents listed in the director's request for evidence, and again in the denial notice. The petitioner has not submitted these documents or credibly demonstrated that the documentation is no longer available.

The petitioner has not submitted the documentation required under 8 C.F.R. § 204.5(m)(3)(i), even after being put on notice as to those requirements. Therefore, the petitioner has failed to meet a basic evidentiary requirement, and the petition cannot 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.