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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:
WAC 02 256 50130

NOV 26 2004

IN RE: Petitioner:
Beneficiary: [redacted]

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:

SELF-REPRESENTED

PUBLIC COPY

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

6 Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner seeks classification 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 at the Hindu Community and Cultural Center, Livermore, California. The director determined that the center is not a qualifying tax-exempt religious organization.

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 information about the center's tax-exempt status. The director issued a request for evidence on November 12, 2002. In response, the petitioner had submitted a letter from the Internal Revenue Service (IRS), dated December 19, 1980, indicating that the center's tax-exempt status derives from classification 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. This section refers in part to religious organizations, but to many types of secular organization as well.

The director denied the petition because the IRS classified the center under section 170(b)(1)(A)(vi) rather than section 170(b)(1)(A)(i) of the Code. This finding, the sole stated ground for denial, relies on a flawed and impermissible interpretation of the regulations. The term "religious organization" can apply to entities other than churches. *See* Memorandum from William R. Yates, Associate Director of Operations, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003), and IRS Publication 1828, page 2, which specifically refers to "[r]eligious organizations that are not churches."

On appeal, the petitioner submits another IRS letter, this one dated May 22, 1997, indicating that the center "is an organization described in section 509(a)(1) and 170(b)(1)(A)(i)" of the Code. On its face, this letter, by itself, would appear to resolve the issue in the petitioner's favor. There are, however, other factors we must consider. If the IRS issued this letter in 1997, then the center should have had the letter in its possession in 2002 when the director requested information about the center's tax exemption. The petitioner's failure to submit the letter at that time raises questions.

Furthermore, the 1997 IRS letter indicates "[i]n August, 1977 we issued a determination letter that recognized your organization as exempt from federal income tax." The previously submitted 1980 IRS letter states, in pertinent part:

> Based on the information you recently submitted, we have classified your organization as . . . an organization described in section 509(a)(1) and 170(b)(1)(A)(vi).
>
> Your exempt status under section 501(c)(3) of the Code is still in effect.

Looking at these two letters, together, it appears that the IRS classified the center under section 170(b)(1)(A)(i) in 1977, but then, in 1980, reclassified the center under section 170(b)(1)(A)(vi). This would be consistent with the letters, because the 1980 letter is not an initial determination letter; rather, the assertion that the center's "exempt status . . . is still in effect" implies a *prior* determination (presumably from August 1977). We conclude that, at some point between 1977 and 1980, the center submitted information to the IRS that led to a change of classification.

Even so, the change of classification is not *necessarily* disqualifying. Mr. Yates' memorandum, cited above, indicates that an entity classified under section 170(b)(1)(A)(vi) of the Code can establish its religious nature if it submits, "at a minimum," the following documentation:

(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;
(4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

In addition to the evidence required [redacted] memorandum, the director should also ask the petitioner to submit more detailed information from the IRS, explaining the apparent reclassification of the center from 170(b)(1)(A)(i) to 170(b)(1)(A)(vi). If, after over 20 years, material regarding the reclassification is unavailable, the petitioner ought to submit a letter from the IRS to that effect. In any case, the burden remains on the petitioner to establish that the center possesses a qualifying exemption. The entity must exist *primarily* as a religious organization, rather than a predominantly *cultural* organization that includes a religious component.

Therefore, 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 Administrative Appeals Office for review.