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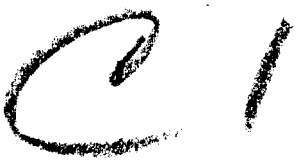
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]



FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JAN 0 4 2005
SRC 01 260 52592

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:

SELF-REPRESENTED

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

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) summarily dismissed the petitioner's subsequent appeal. On December 3, 2004, the AAO reopened the matter on its own motion and provided the petitioner an additional 30-day period in which to supplement the appeal. As of this date, nothing further has been received. The matter is now before the AAO on appeal. The appeal will be sustained and the petition will be approved.

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 minister. The director determined that the petitioner had not established that it qualifies for recognition as a tax-exempt religious organization.

The AAO summarily dismissed the petitioner's appeal because the petitioner's appeal statement did not address the sole stated ground for denial. Given the composition of the record of proceeding before the AAO at that time, the summary dismissal was the correct course of action, pursuant to 8 C.F.R. § 103.3(a)(1)(v). Because the petitioner had submitted documents to CIS that did not reach the record prior to the adjudication of the appeal, we have reopened the proceeding in order to give consideration to those documents.

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 regarding the petitioner's tax-exempt status. On March 10, 2003, the director issued a request for evidence. In that request, the director instructed the petitioner to "[s]ubmit a copy of the IRS's 501(c)(3) certification for the petitioning organization including the actual request for certification Form IRS 1023 or evidence that the petitioning organization is under an umbrella of a parent organization with IRS's certification."

The director's notice is consistent with the regulations. The director requested either a copy of the petitioner's IRS determination letter, as required by 8 C.F.R. § 204.5(m)(3)(i)(A), or else a copy of the petitioner's Form 1023, which is a document required by the IRS to establish eligibility for 501(c)(3) exemption as required by 8 C.F.R. § 204.5(m)(3)(i)(B).

8 C.F.R. § 103.2(b)(8) allows a petitioner twelve (12) weeks to respond to a request for evidence, and states that additional time may not be granted. All evidence submitted in response to a request for evidence must be submitted at one time. The submission of only some of the requested evidence will be considered a request for a decision based on the record. 8 C.F.R. § 103.2(b)(11). Thus, the regulations limit consideration to evidence submitted during the 12-week period granted by the notice. 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).

The petitioner responded to the notice during the time allotted, but the response did not include any documentation to satisfy 8 C.F.R. § 204.5(m)(3)(i)(A) or (B). Instead, the petitioner submitted a letter from its church treasure who stated: "[t]he Church does not have an IRS certification, as it is not required to under IRS regulation 1.508-1(a)(3). Please see attached discussion of this matter from the RIA Federal Tax Coordinator. [The petitioner] meets the requirements which exempt them from filing form 1023."

The cited document states that churches "are not required to file Form 1023." The regulation at 8 C.F.R. § 204.5(m)(3)(i)(A) takes into account entities that have not applied for tax exemption, and requires the petitioner to submit those documents which would have been part of such an application. The regulations clearly state that the petitioner must document (rather than simply claim) its tax-exempt status. It cannot suffice for the petitioner simply to declare that churches need not file Form 1023, because this is merely a general declaration regarding tax law, rather than evidence that the petitioner qualifies as a religious organization under the Internal Revenue Code. The requirement for evidence of tax-exempt status serves as a safeguard against fraudulent petitions filed by entities falsely claiming to be religious organizations. There would be no such safeguard if the entity had only to claim that it was a religious organization.

We reiterate that the director had specifically requested "evidence that the petitioning organization is under an umbrella of a parent organization with IRS's certification," and that the regulations provided the petitioner with twelve weeks, not subject to extension, to submit such evidence. in his letter, made no reference to any group exemption or parent organization. Pursuant to 8 C.F.R. § 103.2(b)(11), the petitioner's submission of this incomplete response to the request for evidence constituted a request for a decision based on the record as it was then constituted.

The director denied the petition on June 4, 2003. In that denial notice, the director quoted the request for evidence, and observed that "[t]he petitioner failed to submit a copy of the IRS 501(c)(3) certification for the petitioning organization."

The petitioner filed an appeal on July 7, 2003. The instructions to Form I-290B, Notice of Appeal, state, in pertinent part:

> You may submit a brief, statement, and/or evidence *with* this form. Or you may send these materials to the AAU within 30 days of the date you sign this form. You must send any materials you submit *after* filing the appeal to [the] Administrative Appeals Unit. . . .
>
> If you need more than 30 days, you must explain why in a separate letter attached to this form. The AAU may grant more time *only* for good cause.

The face of the appeal form instructed the petitioner to "check the one block which applies." The four blocks, in keeping with the above instructions, read as follows:

> I am *not* submitting a separate brief or evidence.
>
> I am submitting a separate brief and/or evidence with this form.
>
> I am sending a brief and/or evidence *to the AAU* within 30 days.

> I need _____ days to submit a brief and/or evidence to the AAU. *(May be granted only for good cause shown. Explain in a separate letter.)*

The petitioner checked the second block, "I am submitting a separate brief and/or evidence with this form." Thus, by omission, the petitioner indicated that there would be *no* subsequent submission. The petitioner did not provide any separate statement to demonstrate good cause for an extension longer than 30 days. As presented to the AAO, the appeal was complete upon its initial submission.

On appeal, former counsel[1] to the petitioner discussed the beneficiary's dates of employment, his duties, and his compensation package. Counsel did *not* mention the petitioner's tax-exempt status, or provide any information relating thereto, even though that was the only stated ground for denial.

Because the petitioner had indicated that there would be no further submission, the AAO rendered its decision on August based solely on what the record contained at the time of adjudication. The AAO summarily dismissed the appeal pursuant to 8 C.F.R. § 103.3(a)(1)(v), because the appeal statement did not identify specifically any erroneous conclusion of law or statement of fact. The AAO's summary dismissal notice included the following explanatory language:

> An entity that has no formal recognition of exemption from the Internal Revenue Service (IRS) cannot satisfy part (A) of the above regulation [8 C.F.R. § 204.5(m)(3)(i)]. To satisfy part (B), the entity must submit the documentation that the IRS would require in order to grant such recognition. Prior to the denial of the petition, the petitioner had conceded that it cannot satisfy part (A), but the petitioner contended that it automatically qualifies as a tax exempt religious organization because churches are not required to apply for recognition. This assertion does not relieve the petitioner of its evidentiary burden under part (B) of the above regulation. The petitioner need not actually *apply* for recognition, but the petitioner must produce the documentation that would be necessary to *support* such an application.

Unbeknownst to the AAO, the petitioner had submitted materials to the office of Representative [redacted] in April 2004, who then forwarded the documents to Citizenship and Immigration Services' (CIS) Office of Congressional Relations on or about April 16, 2004. Whil[redacted] office is not a party to the petition and thus has no standing to supplement the record, the materials submitted were provided directly t[redacted] office by the petitioner. Thu[redacted] office effectively forwarded the petitioner's own submission, rather than offering its own supplement to the record. These materials, provided to CIS several months before the AAO rendered its decision, should have been timely incorporated into the record but were not, for reasons not disclosed in the record.

The new submission consists of three letters. An unsigned letter from [redacted] pastor of the petitioning church, praises the beneficiary's contributions to the church and indicates that the beneficiary is reluctant to leave the United States, even for family emergencies, lest he encounter difficulty in returning. While we acknowledge the sentiments in this letter, they do not relate to the grounds for denial.

The second letter is a copy of a determination letter from the Internal Revenue Service to the Baptist State Convention of North Carolina, dated January 27, 1970. The letter states, in part:

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[1] On December 3, 2004, the petitioner submitted a letter advising CIS that the attorney of record is no longer representing the petitioner.

> [W]e rule that you and your cooperating churches and institutions listed in your Annual Directory are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code, as it is shown that such churches and institutions are organized and operated exclusively for religious purposes. . . .
>
> Each year within 45 days after your annual accounting period closes, please send us . . .
>
> A list of the names . . . of cooperating churches and institutions on your group exemption roster that during the year:
>
> a. changed names or addresses;
> b. were deleted from the roster;
> c. were added to the roster. . . .
>
> You should advise each of your exempt cooperating churches and institutions of the exemption and the pertinent provisions of this ruling.

The third letter, dated April 13, 2004, is from Robert E. Simons, comptroller of the Baptist State Convention of North Carolina. Mr. Simons states:

> The Internal Revenue Service has ruled that the Baptist State Convention of North Carolina and its cooperating churches and institutions are exempt from Federal Income Tax [under] Section 501(c)(3) of the Internal Revenue Service code [sic], as it is shown that such churches and institutions are organized and operated exclusively for religious purposes.
>
> Immanuel Baptist Church is listed as a cooperating church of the Baptist State Convention of North Carolina. The church qualifies for tax exempt status.

The evidence of record supports the finding that the petitioning entity is a church that qualifies for tax exempt status. The director having cited no other grounds for denial, we find that the petitioner has overcome the denial of the petition.

The burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The petition is approved.