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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

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JAN 04 2005
LIN 03 116 51974

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska 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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.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 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 imam, preacher and educator. The director determined that the petitioner 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.

According to documentation from the Internal Revenue Service (IRS), the petitioner'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 509(a)(2) of the Code. The latter section of the Code discusses proportions and sources of funding, rather than the purpose of organizations so classified.

We note that IRS Publication 1828, *Tax Guide for Churches and Religious Organizations*, specifically states that the term "religious organizations" is *not* strictly limited to churches: "Religious organizations that are not churches typically include nondenominational ministries, interdenominational and ecumenical organizations, and other entities whose principal purpose is the study or advancement of religion." *Id.* at 2. The proper test, therefore, is not whether the intending employer is a church *per se*, but rather an entity whose principal purpose is the study or advancement of religion.

The organization can establish this by submitting documentation which establishes the religious nature and purpose of the organization, such as brochures or other literature describing the religious purpose and nature of the activities of the organization. The necessary documentation is described in a 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):

(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.

The above list is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B), cited above. The memorandum specifically states that the above materials are, collectively, the "minimum" documentation that can establish "the religious nature and purpose of the organization." Thus, for example, a petitioner cannot meet this burden by submitting only its articles of incorporation. That being said, it is important to note that item (2), Schedule A of Form 1023, is only required "if applicable." If the director cannot show that Schedule A is applicable in a given instance, then the petitioner's failure to submit Schedule A is not grounds for denial of the petition. Also, obviously, it is not enough merely for the petitioner to *submit* the documents listed above. The *content* of those documents must establish the religious purpose of the organization.

We note that the director mentioned IRS Form 1023 in a request for evidence issued prior to the denial. This notice, however, indicated that the submission of Form 1023 was optional (indicating that the petitioner should submit certain other evidence "**OR**" Form 1023), and therefore the petitioner's failure to submit Form 1023 at that time is not a fatal deficiency. The director should again request this document, because the petitioner's IRS determination letter does not mention any exclusively religious classification, and therefore the determination letter is not prima facie evidence that the petitioner's tax-exempt status derives from religious factors. We note, also, that IRS regulations at 26 C.F.R. § 301.6104(d)-1(a) indicate that Forms 1023 filed after July 15, 1987 must be retained and made available for public inspection. Because the IRS issued the petitioner's determination letter in 1994, we conclude that the petitioner filed its Form 1023 after July 15, 1987. The petitioner must provide a copy of Form 1023 as originally filed circa 1993, rather than a newly-executed version of that form, the crucial issue being how the petitioner presented itself to the IRS when it applied for recognition of tax-exempt status.

On appeal, counsel cites "the I.R.S. exempt status manual, listed in page 25." The "manual" cited is IRS Publication 557, *Tax-Exempt Status for Your Organization*, page 25 of which states, in pertinent part:

> ***Integrated auxiliaries***. An organization is an integrated auxiliary of a church if all the following are true.
>
> 1) The organization is described both in sections 501(c)(3) and 509(a)(1), 509(a)(2), or 509(a)(3).
> 2) It is affiliated with a church or a convention or association of churches.
> 3) It is internally supported. An organization is internally supported unless both of the following are true.
> a) It offers admissions, goods, services or facilities for sale, other than on an incidental basis, to the general public (except goods, services, or facilities sold at a nominal charge or for a small part of the cost).
> b) It normally gets more than 50% of its support from a combination of government sources, public solicitation of contributions, and receipts from the sale of admissions, goods, performance of services, or furnishing of facilities in activities that are not unrelated trades or businesses.

The director, prior to denying the petition, did not consider the above-stated IRS policies. The director simply denied the petition because the IRS classified the petitioner under a section other 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 director must, therefore, provide the petitioner with an opportunity to submit the materials outlined in [redacted] memorandum and in IRS Publication 557, and thereby demonstrate that its tax-exempt status derives primarily from its religious character and that it qualifies, as claimed, as an integrated auxiliary of a church.

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.