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

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 21 2005
WAC 03 004 50937

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.

Marie Johnson

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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a missionary 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 its assistant education director/instructor. The director determined that the petitioner is not a qualifying tax-exempt religious organization and that the position offered to the beneficiary does not qualify as a religious occupation.

First, we shall address the question of whether the position offered is a religious occupation. The regulation at 8 C.F.R. § 204.5(m)(2) defines "religious occupation" as an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters.

Yong Bok Kim, president of the petitioning entity, states that the duties of the beneficiary's position consist of advertising the petitioning organization in religious publications and fliers; offering four five-day missionary training courses per year; and dispatching the newly-trained missionaries to start new churches. The subjects to be offered in the training courses are "culture, language mission, personal & group evangelism, counseling, pasturing [sic], church growth, Bible, church administration, Christian education, discipleship training, worship, Church music, preaching, Christian ethics, experience of mission work, etc."

The director instructed the petitioner to submit additional information about the position, and to "explain how the duties of the position relate to a traditional religious function." In response, the petitioner has submitted an hourly breakdown of the duties listed above, and indicated that the beneficiary has performed these same duties since September 2000. The petitioner submits documents that indicate the beneficiary has considerable training and experience in missionary work and religious education. Other documents indicate that, before he began working in religious education, the beneficiary earned a degree in management.

The director, citing the petitioner's management degree, determined that "the petitioner has not established that the prospective occupation is a religious occupation" because there is no evidence that "the beneficiary had to undergo any specific religious training or theological education in preparation for a career in religious work."

On appeal, counsel argues that the training of missionaries "clearly relate[s] to a traditional religious function." We are inclined to agree. The regulation at 8 C.F.R. § 204.5(m)(2) specifically includes "religious instructors" and "missionaries" within the definition of religious occupations. The religious training of missionaries appears, from the available evidence, to be an integral and intrinsically religious function of the petitioning missionary organization. Assuming the petitioner's description of the beneficiary's duties to be accurate, the position, as described, is a qualifying religious occupation. We hereby withdraw the director's finding to the contrary.

If the director has cause to believe that the beneficiary's actual duties do not match the description provided, the director should ask the petitioner to provide additional evidence to establish the true nature of the beneficiary's duties; but this is a separate question from whether the duties *as described* are qualifying in nature.

The other issue on appeal pertains to the petitioner's tax-exempt status. 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, 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 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.

Clearly, an organization that qualifies for tax exemption as a publicly-supported organization under section 170(b)(1)(A)(vi) of the Code can be either religious or non-religious. The burden of proof is on the petitioner to establish that its classification under section 170(b)(1)(A)(vi) of the Code derives primarily from its religious character, rather than from its status as a publicly-supported charitable and/or educational institution.

We note that Internal Revenue Service 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.

The director denied the petition in part because the Internal Revenue Service classified the petitioner under section 170(b)(1)(A)(vi) rather than section 170(b)(1)(A)(i) of the Internal Revenue Code. This finding 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 that memorandum, and thereby demonstrate that its tax-exempt status derives primarily from its religious character.

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.