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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 21 2005
LIN 02 172 52269

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

G Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The director treated the petitioner's untimely appeal as a motion to reopen, and again denied the petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a religious order. 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 religious brother. 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 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 petitioner has submitted a copy of an IRS determination letter dated January 26, 1984, indicating that the petitioner is "exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code," as "an organization described in section 509(a)(2)" of the Code. A second IRS letter, dated March 24, 1992, indicates that the petitioner "is a religious order for purposes of SECA taxes, FICA taxes, and federal income tax withholding." A third letter, dated July 27, 1992, indicates that the petitioner is not required to file an annual Form 990 return, pursuant to section 6033(a)(2)(A)(iii) of the Code. That section pertains only to religious orders.

The director, denied the petition because the IRS did not classify the petitioner as a church under section 170(b)(1)(A)(i) of the Internal Revenue Code. The director acknowledged the beneficiary's submission of the above IRS letters, but asserted that the 1992 letter is irrelevant because it pertains to the withholding of employees' taxes, rather than tax-exempt designation. It remains, however, that the petitioner has proven that it is a 501(c)(3) non-profit organization, which the IRS has recognized as a religious order. The director cites nothing to show that the petitioning entity exists for any purpose other than the study or advancement of

religion. The petitioner's IRS Form 1023 and other documents support the finding that the petitioning entity is overwhelmingly religious in its purpose and activities, and that the IRS officially recognizes as much.

The burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met this burden. The sole stated ground for denial rests on a flawed and impermissibly restrictive reading of the regulations. Therefore, we hereby sustain the petitioner's appeal.

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