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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: MAR 23 200

SRC 04 186 52248

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: 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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center denied the employment-based immigrant visa petition on March 31, 2005. The director reopened the decision on a service motion on May 20, 2005, and subsequently affirmed her previous decision. The matter is now before the Administrative Appeals Office (AAO) 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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.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 "Christ-centered, referral based ministry" offering a "full-time residential program, non-residential counseling, and group study sessions." 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 senior religious counselor. The director determined that the petitioner had not established that it qualifies as a bona fide nonprofit religious organization.

On appeal, the petitioner submits a brief and additional documentation.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> > (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
> >
> > (II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
> >
> > (III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The issue presented on appeal is whether the petitioner established that it qualifies as a bona fide nonprofit religious organization.

The regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

> (3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:

> (i) Evidence that the organization qualifies as a nonprofit organization in the form of either:
>
> > (A) Documentation showing that it is exempt from taxation in accordance with § 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 § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

With the petition, the petitioner submitted a copy of a May 6, 2002 letter from the Internal Revenue Service (IRS) indicating that it had granted the petitioner tax-exempt status under section 501(c)(3) of the Internal Revenue Code (IRC) as an organization that is described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the IRC. It submitted a copy of a flyer describing itself as "a place where hurting women can find healing for their problems through understanding the love and peace of God, and how their identity in Him can set them free. It is a home-like environment where trained Christian counselors help women develop long-terms[sic] goals and heal from spiritual and emotional wounds using biblical solutions." The petitioner submitted other flyers and newsletters in which it identified itself as a "Christ-centered, referral based ministry," and submitted a copy of its "Statement of Faith."

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the IRS is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the IRC of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, if applicable, and a copy of the organizing instrument of the organization, which contains a proper dissolution clause and which specifies the purposes of the organization.

An organization that qualifies for tax exemption as a publicly supported organization under section 170(b)(1)(A)(vi) of the IRC 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) derives primarily from its religious character, rather than from its status as a publicly supported charitable and/or educational institution.

Because the IRS determination letter that classifies an entity under section 170(b)(1)(A)(vi) of the IRC cannot, by itself, establish that the entity is a religious organization, that determination letter cannot satisfy 8 C.F.R. § 204.5(m)(3)(i)(A). The other option, at that point, is to comply with 8 C.F.R. § 204.5(m)(3)(i)(B) by submitting the documentation that the IRS would require to determine that the entity is a religious organization.

The petitioner can establish under8 C.F.R. § 204.5(m)(3)(i)(B) by submitting documentation that 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 Operation for CIS, *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 he appropriate dissolution clause required by the IRS and that specifies the purposes of the organization, and
(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. 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 initially denied the petition, stating that the petitioner must establish that it was tax-exempt under section 170(b)(1)(A)(i) as a church. In its appeal of this decision, the petitioner noted the requirements of the Yates Memorandum, discussed above, and submitted, in addition to previously submitted documentation, a completed copy of IRS Form 1023 and a copy of its articles of incorporation containing the dissolution clause required by the IRS in determining eligibility for tax-exempt status under section 501(c)(3) of the IRC.

On May 20, 2005, the director concluded that the petition was "improperly denied," reopened the proceeding on service motion and requested additional evidence. The director instructed the petitioner that to "[s]ubmit evidence that the petitioning organization has IRS's 501(c)(3) certification as a religious organization." The director identified as acceptable evidence, the documentation outlined in the Yates Memorandum. In response, the petitioner resubmitted copies of its previously submitted documentation.

The director denied the petition, noting that the petitioner's articles of incorporation did not indicate that it was established for religious purposes, and that the petitioner did not indicate on the IRS Form 1023 that it was established as a church. The director determined that, as the petitioner had not submitted proof of its tax-exempt status as a church, the petitioner had not established that it was a bona fide nonprofit religious organization.

On appeal, the petitioner submits letters from three ministers and a member of its board of directors, attesting that the petitioner is a religious organization. The petitioner also submitted a copy of an amendment to its articles of incorporation filed with the State of Florida on September 12, 2005, indicating that its "general purpose shall be to propagate among women the Gospel of Jesus Christ." However, as the amendment is subsequent to the filing date of the petition, it is not probative in this proceeding. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Nonetheless, the evidence submitted by the petitioner sufficiently establishes that the petitioner is a bona fide nonprofit religious organization. Although the petitioner's articles of incorporation do not specify that it was organized for religious purposes, all of the other documentation submitted by the petitioner, including the IRS Form 1023, reflects that it is of a religious nature. There is no requirement in the statute or regulation that requires a petitioner to establish that it is a church in order to qualify for this visa preference classification. We withdraw any intimation in the director's decision to the contrary.

Nonetheless, the petition may not be approved as the record now stands.

The record does not establish that the petitioner is a religious denomination or an affiliate of a religious denomination.

The regulation at 8 C.F.R. § 204.5(m)(2) defines religious denomination as:

> [A] religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship and religious congregations, or comparable indicia of a bona fide religious denomination. For the purposes of this definition, an inter-denominational religious organization which is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 will be treated as a religious denomination.

In its June 11, 2004 letter forwarding the petition, the petitioner, quoting the above regulation, stated that it is a religious denomination. The petitioner submitted a copy of its "Statement of Faith;" however, it submitted no evidence that it has an ecclesiastical government, a form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship and religious congregations, or other comparable indicia of a bona fide religious denomination.

The record is remanded to the director for a determination as to whether the petitioner has established that it is a religious denomination or affiliated with a religious denomination having a bona fide nonprofit, religious organization in the United States.

Additionally, the record does not establish that the beneficiary has been continuously employed in a qualifying religious occupation for two full years prior to the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States." The regulation indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition."

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

> (ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:
>
> > (A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on June 24, 2004. Therefore, the petitioner must establish that the beneficiary was continuously working in the religious occupation throughout the two-year period immediately preceding that date.

In its June 4, 2004 letter accompanying the petition, the petitioner stated that the beneficiary began her affiliation with the petitioning organization in December 2000 as an intern, and had been a member of the staff in the position of religious counselor since May 2002. The beneficiary was also listed on the petitioner's June 2004 letterhead as assistant director and counselor. The petitioner submitted a copy of the beneficiary's year 2003 Form W-2, Wage and Tax Statement, which indicated that the petitioner paid her approximately $11,609. The petitioner submitted no documentary evidence with the petition to corroborate the beneficiary's employment in 2002 or 2004. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In response to the director's request for additional evidence, the petitioner submitted copies of the beneficiary's Forms W-2 for 2002 and 2004, reflecting that it paid her $4,800 and $18,990, respectively. The petitioner also submitted copies of the beneficiary's Form 1040EZ, Income Tax Return for Single and Joint Filers With No Dependents, for the years 2002 through 2004. The Forms W-2 accompanying the returns reflect that the beneficiary received wages of approximately $3,075 in 2002 and approximately $890 in 2003 from Advanced Facial Cosmetic & Laser Surgery Center, Inc.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." *See* H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law, a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious

undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

On remand, the director should address whether the petitioner has established that the beneficiary has worked continuously in the religious occupation for two full years immediately preceding the filing of the visa petition.

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 AAO for review.