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U.S. Citizenship and Immigration Services

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[redacted]

FILE: LIN 04 237 51883 Office: NEBRASKA SERVICE CENTER Date: MAY 19 2006

IN RE: Petitioner: [redacted]
Beneficiary:

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, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Acting Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The self-petitioner seeks classification 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 worker. The director determined that the petitioner had not established that his prospective U.S. employer qualifies as a bona fide nonprofit religious organization. The director further determined that the petitioner had not established that he had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

On appeal, the petitioner submits a letter 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
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> (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 first issue on appeal is whether the petitioner established that his prospective U.S. employer is 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.

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 Internal Revenue Service (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 Internal Revenue Code (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.

With the petition, the petitioner submitted a July 28, 2004 letter from [redacted] bishop of the Littleton Sixth Ward of the Church of Latter-Day Saints. [redacted] stated that, as the Church of Latter-Day Saints is "nationally known," he "assume[s] that the charitable and tax exempt status of the LDS Church should be self-evident." Nonetheless, the petitioner submitted no evidence that the Littleton Sixth Ward is covered under a group tax-exemption certification granted to the parent organization of the Church of Latter-Day Saints.

The petitioner must either provide verification of individual exemption from the IRS, proof of coverage under a group exemption granted by the IRS to the denomination, or such documentation as is required by the IRS to establish eligibility as a tax-exempt nonprofit religious organization. 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 as it relates to religious organizations.

The petitioner can establish eligibility under 8 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 Citizenship and Immigration services (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 the 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 the articles of incorporation of the organization. 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.

In response to the director's request for evidence (RFE) dated May 12, 2005, the petitioner submitted another letter from [redacted], who stated that his ward did not have a copy of the section 501(c)(3) issued to the parent church, but reiterated that that "the LDS Church is a well-known established religion with over 12 million members worldwide."

On appeal, the petitioner cites *Corporation of Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327 (1987), stating that the government has recognized the church. It must be emphasized that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). In this case, the petitioner failed to submit evidence that the Littleton Sixth Ward, his prospective U.S. employer, is covered under a group tax-exemption granted to a parent organization.

Accordingly, the petitioner has failed to establish that his prospective U.S. employer qualifies as a bona fide nonprofit religious organization.

The second issue presented on appeal is whether the petitioner established that he had been continuously employed in a qualifying religious vocation or 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 August 23, 2004. Therefore, the petitioner must establish that he was continuously working in the qualifying religious occupation or vocation throughout the two-year period immediately preceding that date.

In his July 28, 2004 letter, [redacted] stated:

> [The petitioner] is an active participant in our ward. He currently holds the office of a Priest. The LDS church utilizes a lay ministry for the operation of its local wards and other local organizations, which means that as a member of the Littleton 6th Ward, [the petitioner] is expected to, and does, participate in certain aspects of the operation of our ward without compensation.
>
> [The petitioner] is not an employee of the LDS Church or our local ward (. . . our local ward has no employees), but [the petitioner] has been called to serve as a home teacher, which means that he is responsible, with his home teaching companion, for looking after the spiritual and temporal welfare of approximately five families of our ward. [He] has also been given the calling of Welfare Specialist in our ward, which means that he is responsible for instructing the approximately 400 members of our ward in preparing for emergencies, storing adequate resources and utilizing the resources available from the LDS Church in its welfare program. This responsibility also means that [he] is expected to offer weekly assistance in the operation of the LDS Church's welfare center . . . All of the above assignments are fulfilled without compensation.

The petitioner submitted no documentary evidence to corroborate any work that he performed in any capacity during the qualifying period. 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 his July 17, 2005 letter submitted in response to the director's RFE, stated:

> [P]lease be aware that the LDS Church is operated on a local basis purely by a lay ministry. Consequently, I am not certain exactly what would qualify a person in the LDS Church to be involved in "religious work." As I previously stated, [the petitioner] is an Elder in the LDS Church and is involved in his calling as the Ward Welfare Specialist. I do not know whether that meets your requirement, but his participation does seem to be to be "religious work." Just so that I am clear, [the petitioner] is not employed by the LDS Church, but participates in his calling without compensation, as do most other active members of the LDS Church.
>
> You also stated that you need a description of the [clergical] duties performed by [the petitioner]. [The petitioner's] current duties in the LDS Church do not really involve conducting religious worship, although his office as an Elder would allow him to so if he currently had that calling.

Again, the petitioner failed to submit corroborative evidence, such as authenticated work schedules, to document his work with the church. *Id.*

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).

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.

The petitioner submitted no additional evidence of his work experience on appeal. Therefore, the petitioner failed to establish that he worked continuously in a qualifying religious occupation for two full years preceding the filing of the visa petition.

Beyond the decision of the director, the petitioner has not established that the position qualifies as that of a religious worker.

According to the regulation at 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work as a religious worker. To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

CIS therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In his July 15, 2005 letter, [redacted] stated:

> [The petitioner's] current calling involves helping members of the LDS Church take advantage of the welfare services available from the LDS Church by coordinating service opportunities, as well as opportunities for helping individuals with welfare needs that can be provided by the LDS Church. Again, I do not want to mislead you about [the petitioner's] duties. He is a member of the LDS Church; he is an ordained Elder in the LDS Church; he does have a calling in the LDS to perform what I would call "religious work;" but he is not employed by the LDS Church and does not currently conduct religious worship.

The petitioner submitted no evidence that the position of "welfare specialist" is defined and recognized by the Church of Latter-Day Saints, or that the position is traditionally a permanent, full-time, salaried occupation within the denomination, or that the position is other than secular in nature. Further, while the determination of an individual's status or duties within a religious organization is not under CIS's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978). Accordingly, the petitioner has not established that the position qualifies as that of a religious worker within the meaning of the statute and regulation. This deficiency constitutes an additional ground for denial of the petition.

Further beyond the director's decision, the petitioner has not established that he has been extended a qualifying job offer.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

> *Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

According to [redacted], all positions at the local ward are uncompensated, and the petitioner submitted no evidence of the hours or other requirements of the position. The petitioner, therefore, failed to establish that he would not be dependent on supplemental employment or the solicitation of funds for his support. The evidence does not establish that the petitioner has received a qualifying job offer. This deficiency is another ground for denial of the petition.

Also beyond the director's decision, the petitioner has not established that his prospective employer has the ability to pay the proffered wage.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

Although [redacted] stated that he position is uncompensated, the petitioner of an employment based visa preference petition must establish that that the prospective U.S. employer is able to compensate the alien. The petitioner submitted no evidence of the organization's financial status. Therefore, he failed to establish that the employing organization could pay him a wage. This deficiency constitutes an additional ground for denial of the petition.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.