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

U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: VERMONT SERVICE CENTER Date: AUG 13 2007

EAC 05 214 50345

IN RE: Petitioner:
Beneficiary: [redacted]

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.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a rural community of the International Society for Krishna Consciousness. 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 priest. The director determined that the petitioner had not established its ability to support the beneficiary financially.

On appeal, the petitioner submits additional materials. We note that there is no indication that counsel participated in the preparation or submission of the appeal. Nevertheless, counsel remains the attorney of record, absent affirmative evidence that counsel has withdrawn from that capacity.

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 sole issue raised by the director concerns the petitioner's ability to support the beneficiary. 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.

Here, the petitioner will not pay a salary as such [redacted] President of the petitioning center, stated that the beneficiary "will live within our temple facility under a vow of poverty." [redacted] President of ISKCON in Mumbai, India, stated that the beneficiary's "boarding, lodging and medical expenses will be fully financed and supported by" the petitioner. The record indicates that the beneficiary has served at the petitioning temple as an R-1 nonimmigrant religious worker since June 2004. Therefore, the beneficiary's support is already among the petitioner's existing expenses, rather than a new expense that the petitioner has yet to assume.

The only financial documentation submitted with the initial filing was a June 30, 2005 bank statement, showing the following figures:

Balance as of 05/31/05	$36,802.10
Deposits and other credits	73,079.87
Checks and other debits	90,600.86
Balance as of 06/30/05	19,281.11

To establish its qualifying tax-exempt status, the petitioner submitted a copy of a determination letter from the Internal Revenue Service, dated April 19, 1977. This letter indicated that the petitioner is not required to file Form 990, Return of Organization Exempt From Income Tax, because the petitioner qualifies as a "church" under section 170(b)(1)(A)(i) of the Internal Revenue Code.

On August 25, 2005, the director instructed the petitioner to submit either "[a] photocopy of the most current fiscal year Form 990 or 990 EZ" or "a current financial statement that either has been reviewed or audited by a Certified Public Accountant." In response, the petitioner submitted a balance sheet for the period from January 1 to October 4, 2005.

The director denied the petition on January 30, 2006, stating that the petitioner did not show "that the documents have been reviewed or audited by a Certified Public Accountant as requested."

When the petitioner initially appealed the decision on February 14, 2006, the petitioner requested an additional 30 days in which to submit unspecified evidence. [redacted] still calling himself president of the petitioning entity, stated: "We have already asked our CPA to review our current financial records and he should be able to give us a report in 2-3 weeks time and then we will submit the details and evidence." Subsequently, in March 2006 (the exact date is not clear), the petitioner submitted a copy of a Form 990 return. In conjunction with this latest submission, [redacted] states: "We were not able to provide the needed documentation earlier because our CPA [redacted], Ohio) were reviewing and working on filing Form 990 to IRS at the time when USCIS requested for further evidence [*sic*]. Thus now the document is ready, we are sending a copy of Form 990 for your records."

[redacted] most recent comments imply that the Form 990 return submitted on appeal was already under preparation "when USCIS requested . . . further evidence." The return, however, covers calendar year 2005. The request for evidence was issued on August 25, 2005, and the response was due no later than November 20, 2005. Because calendar year 2005 was still ongoing during the response period, it is not credible that the Form 990 for that year would have already been in preparation.

According to dates on the form, the preparer completed the Form 990 on March 6, 2006, five weeks after the petition was denied. The petitioner has, therefore, attempted to overcome the denial by submitting initially required evidence that did not exist until well after the denial date. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm. 1998).

Furthermore, the regulations state that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(8), (b)(12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). This case law is consistent with 8 C.F.R. § 103.2(b)(8), which states that there can be no extension of the 12-week response period for a request for evidence. Requested evidence must be submitted during that period, not at a later time such as on appeal.

We note that the Form 990, dated March 6, 2006, twice identifies [redacted] as President of the petitioning organization. Nevertheless, on appeal, in letters dated February 13 and March 8, 2006, [redacted] continues to refer to *himself* by that title. [redacted]'s name does not appear in the list of "Current Officers" in the Form 990, nor anywhere else in that document, and [redacted]'s letters never mention [redacted]. The petitioner does not even acknowledge, much less explain, this puzzling discrepancy.

We note that the director's request for evidence did not conform to the evidentiary requirements at 8 C.F.R. § 204.5(g)(2), which indicate that evidence of ability to pay "shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements." Nevertheless, had the petitioner timely complied with the request for evidence by submitting a Form 990 return or an audited financial statement, such evidence would have conformed to the regulatory requirement. Submission of a financial statement reviewed, but not audited, by a certified public accountant would have satisfied the director's request, but not the regulatory requirements. In any event, however, the petitioner did not submit such a statement, and therefore we need not address the implications of good faith compliance with a flawed request for evidence. As matters now stand, the precise wording of the request for evidence does not appear to have affected the ultimate outcome of this proceeding. That is, there is no cause to believe that the director's wording of the notice prevented the petitioner from submitting qualifying initial evidence that the petitioner would otherwise have submitted.

We stress that this decision is not intended as a definitive finding that the petitioner is *not* able to support the beneficiary. Rather, we find only that the petitioner has not met its burden of proof to show that it *is* able to provide such support. There is no presumption of eligibility that we must rebut or overcome in order to arrive at such a finding.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.