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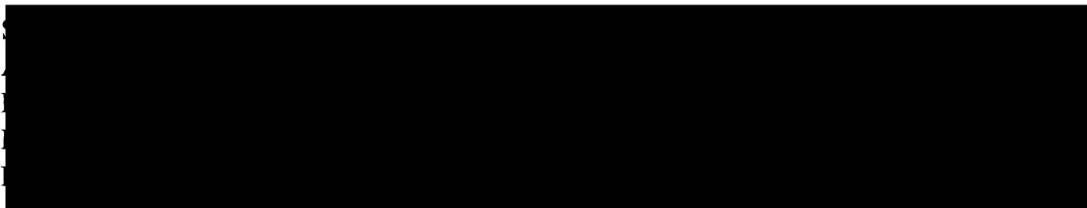
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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Services

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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JAN 10 2007
LIN 05 235 53202

IN RE: Petitioner: [redacted]
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:

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.

A handwritten signature in cursive script, appearing to read "Maui Johnson".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter 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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.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 diocese of the [REDACTED]. 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 chaplain at [REDACTED] in Cannon Branch, Oregon. The director determined that the petitioner had not established that the beneficiary had the requisite credentials and two years of continuous work experience as a chaplain immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that it qualifies as a tax-exempt religious organization.

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).

8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit “[e]vidence 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.

A critical point, here, is what the regulation means by “the organization.” 8 C.F.R. § 204.5(m)(1) states, in pertinent part:

The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization’s request in a professional capacity in a religious vocation or occupation, or working in a religious vocation or occupation for the organization or 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.

The AAO interprets this regulation to mean that the specific entity for which the alien is to work must, itself, qualify as a 501(c)(3) tax-exempt non-profit organization. The petitioner has submitted evidence of USA’s qualifying tax-exempt status, but this is not sufficient in this instance because the beneficiary is not to be employed directly by or by the petitioning diocese. Rather, the beneficiary is to work for which is a separate legal entity, incorporated in the State of Oregon.

While is registered with the State of Oregon as a non-profit corporation, the record contains no evidence that the IRS recognizes’ non-profit status, religious or otherwise. State recognition as a religious non-profit organization does not imply or compel federal recognition as a 501(c)(3) non-profit organization.¹

Rt. Rev. Dr. Bishop of the petitioning diocese, states:

The [petitioning] Diocese is the Native American Ministry arm of the , and Ministries is a ministry of the [the petitioning] Diocese. . . .

Since 2002, [the beneficiary] has served in a full-time ministry capacity with , which is registered as a Domestic Nonprofit Corporation With Religious Members with the State of Oregon. [is] a ministry of the [petitioning] Diocese with 501(c)(3) status.

It is not sufficient, however, simply to claim “501(c)(3) status”; the aforementioned regulations list specific documentary requirements. The petitioner must submit either:

¹ The State of Oregon advises as much at http://www.filinginoregon.com/business/nonprofit_information.htm, a web site maintained by the Oregon Secretary of State, Corporation Division.

1. A recognition letter from the Internal Revenue Service (IRS), establishing that the IRS recognizes [REDACTED] as a qualifying tax-exempt religious organization under section 501(c)(3) of the Internal Revenue Code of 1986 (the Code);
2. Documentary evidence showing that [REDACTED] is covered by a group exemption issued to [REDACTED] or [REDACTED];
3. Documentation that the IRS would require in order to issue a recognition letter to [REDACTED].

With regard to the third option listed above, 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.

The evidence in the record as it now stands is not sufficient to meet any of these requirements. The director listed some of these requirements in the denial notice, but did not make it clear that “the organization” in question is not [REDACTED] or the petitioning diocese, but rather [REDACTED].

On appeal, the petitioner rightly observes that the request for evidence issued prior to the denial did not contain any indication that the organization’s tax-exempt status was in question. The director must, therefore, allow the petitioner a fair opportunity to establish that [REDACTED] is recognized by the IRS as a qualifying tax-exempt organization, or that it is a church or integrated auxiliary of a church that qualifies for such recognition.

IRS Publication 1828, *Tax Guide For Churches and Religious Organizations*, includes a glossary that offers this definition of an integrated auxiliary of a church:

The term integrated auxiliary of a church refers to a class of organizations that are related to a church or convention or association of churches, but are not such organizations themselves. In general, the IRS will treat an organization that meets the following three requirements as an integrated auxiliary of a church. The organization must:

- be described both as an IRC section 501(c)(3) charitable organization and as a public charity under IRC sections 509(a)(1), (2), or (3),
be affiliated with a church or convention or association of churches, and
receive financial support primarily from internal church sources as opposed to public or governmental sources

The glossary also lists several characteristics of a church, including “regular congregations” and “regular religious services.” A “ministry” that provides counseling and social services, but does not conduct organized worship at more or less regular intervals, may not qualify as a church. The distinction is significant because a church, including an integrated auxiliary of a church, can claim 501(c)(3) tax-exempt status without filing Form 1023 with the IRS, but a religious organization that is not, itself, a church, an association of churches, or an integrated auxiliary of a church, cannot claim such an exemption unless it has filed Form 1023 with the IRS, and the IRS has approved that application. *See* IRS Publication 1828, which states that “churches are not required by law” to file Form 1023, but which also distinguishes between “churches” and “religious organizations.”

An organization that performs religious activities, and is affiliated with a religious denomination, is not necessarily a church. Also, the pertinent statutory and regulatory provisions specify that the non-church religious organization must actually be exempt under section 501(c)(3) of the Code; it cannot simply claim eligibility for such exemption.

Therefore, the petitioner must demonstrate that the IRS has recognized [REDACTED] as a 501(c)(3) non-profit organization, or else establish that [REDACTED] is, itself, a church or an integrated auxiliary of a church (as the IRS defines that term). If the petitioner refuses or is unable to provide satisfactory evidence in this regard, then the director will be justified in denying the petition on that basis.

We now turn to the issues of the beneficiary’s credentials and experience. The regulation at 8 C.F.R. § 204.5(m)(1) 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.” 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on August 8, 2005. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a chaplain throughout the two years immediately prior to that date.

The regulations at 8 C.F.R. §§ 204.5(m)(3)(ii)(B) through (D) require the petitioner to demonstrate that the beneficiary is qualified for the position offered. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following relevant definitions:

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection

between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

Religious occupation means 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. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

Bishop Levesque states that the beneficiary and her family “have been living and serving in ministry in Cannon Beach, Oregon. Since June 2002, [the beneficiary] has served in a full-time ministry capacity with [REDACTED] Bishop Levesque lists several of the beneficiary’s “functions/activities through [REDACTED] over the past three years”:

1. Supporting the first annual Native Theological Retreat. . . . This retreat brought together both Western trained theologians and traditional native spiritual leaders to address issues of concern to First Nations communities. . . .
2. Ministering on line to a South African immigrant community with its members in the USA and Canada. Ministry has included counseling in private forums as well as one on one (personal counseling). . . .
3. Organizing an annual spiritual retreat for such immigrants in Cannon Beach, OR for the purpose of ministering to people through prayer, counsel, teaching and fellowship. . . .
4. Organizing a multi-cultural retreat where Native Americans, South Africans and Anglo Americans met and worshiped and fellowshiped together for three days in November 2004. . . .
5. Publishing – the [beneficiary and her family] have developed the publishing arm for called Eagles’ Domain, and have started producing Gospel literature for South African immigrants, written in Afrikaans and English. Through Eagles’ Domain they will be producing material for our Native ministry as well.
6. Projects such as assisting Native families in need. Through their on line ministry, [the beneficiary] initiated and ran several projects to raise an awareness of such needs, and procuring gifts for such individuals/families, which were then mailed directly to those in need.

Bishop [REDACTED] refers to the beneficiary and her spouse as a “clergy couple,” and their names appear (with the plural prefix “Revs.”) in a “Clergy Directory” on the petitioner’s denomination’s web site. A June 16, 2005 story in the *Cannon Beach Gazette* refers to the beneficiary as “an ordained chaplain who . . . runs the non-profit Cedar Way Ministries which provides immigration assistance and works with Native Americans.” A Certificate of Ordination shows that the beneficiary was ordained as a chaplain on February 21, 2005.

In denying the petition, the director stated:

as defined by Merriam-Webster's Collegiate Dictionary, Tenth Edition, is as follows:

"1: a clergyman in charge of a chapel 2: a clergyman officially attached to a branch of the military, to an institution, or to a family or court 3: a person chosen to conduct religious exercises 4: a clergyman appointed to assist a bishop.["]

It is clear, based upon this definition, that a Chaplain and a Minister perform the basic same duties. Therefore the Service must assume that the beneficiary's primary duties are most closely associated with those of a Minister or Pastor. . . .

Evidence submitted by the petitioner, with the original filing, indicates that the beneficiary was not ordained . . . until February 21, 2005. The beneficiary has not met the 2 year experience requirement based upon the recent ordination into the petitioner's religious organization.

On appeal, the petitioner asserts that the definition of "chaplain" that most closely describes the beneficiary's role is that of "assistant to the bishop." More important than the use of the term "chaplain" is the nature of the beneficiary's duties. A petitioner cannot cause an alien to become eligible simply by granting the alien the title of "minister." See *Matter of Rhee*, 16 I&N Dec. 607, 610 (BIA 1978). By the same token, an alien who is not an ordained minister, but who nevertheless performs religious functions, is not disqualified simply because her employer calls her a "chaplain" rather than some other title.

While the beneficiary may not have been officially ordained as a chaplain until 2005, it is not clear whether this ordination is a fundamental requirement for the tasks that the beneficiary has performed and intends to continue performing. The ordination may simply be a desirable but non-essential credential (much like a Ph.D. in an occupation that requires only a master's degree). Even if the beneficiary's ordination as a chaplain is comparable to ordination as a minister, an ordained minister can be employed in a non-ministerial capacity and still qualify as an alien in a religious occupation, if not as a minister *per se*.

The petitioner has not, to date, had a clear opportunity to explain this matter. The director must allow the petitioner to provide a documented explanation as to how ordination relates to the fundamental duties of the beneficiary's position as a chaplain.

The petitioner should also present more thorough documentation to establish that the beneficiary has worked continuously in the proffered position throughout the relevant two-year period. The petitioner must also be able to identify and document the beneficiary's means of support throughout that period. We note, in this regard, the petitioner's submission of an article from the October 2003 issue of the religious publication *Today*. The beneficiary is credited as the author of the article (about singer Pat Boone); her author's credit identifies the beneficiary as "a foreign correspondent for TODAY . . . [who is] also involved in full-time ministry." Writing for a religious publication may qualify, but further information about the nature and extent of this work is in order.

The director was correct in finding the record to be deficient with regard to the tax status of the beneficiary's prospective employer, and the beneficiary's past experience, but the request for evidence and subsequent notice

of decision did not afford the petitioner a sufficient understanding of the nature of these deficiencies to allow the petitioner to mount a meaningful appeal.

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.