U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

C1

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: NOV 0 3 2009

WAC 06 185 52149

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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) remanded the matter for consideration under new regulations. The director again denied the petition and, following the AAO's instructions, certified the decision to the AAO for review. The AAO will affirm the director's decision.

The petitioner, identified as a church, 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 minister. The director determined that the petitioner had failed to respond to a notice requesting required evidence.

In response to the certified decision, the petitioner submits various letters and documents intended to establish that the petitioner is a *bona fide* church and that the beneficiary has served as its minister.

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 31, 2009, 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 31, 2009, 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 petitioner filed the petition on May 26, 2006. In a joint letter, the petitioner's [redacted], and [redacted] stated: "We are not sure what legal forms must be submitted on [the beneficiary's] behalf." Much of the initial submission consisted of letters from

witnesses who asserted that the beneficiary had been a minister in Mexico and the United States since the late 1980s.

On December 11, 2006, the director issued a request for evidence (RFE), instructing the petitioner to submit evidence of its tax-exempt status; the beneficiary's work history; the beneficiary's immigration status; and other information. In response, the petitioner submitted the beneficiary's job description; the proposed terms of employment; financial information; and a letter from the Internal Revenue Service (IRS), indicating that the IRS had assigned the petitioner an Employer Identification Number. The IRS letter is dated January 23, 2007, some six weeks after the RFE was issued. The issuance of an EIN is not evidence of tax-exempt status.

On May 2, 2007, the director advised the petitioner that the director would deny the petition unless the petitioner submitted evidence of its tax-exempt status within 30 days. The director received no response to this notice, and denied the petition on July 31, 2007 on that basis.

On August 27, 2007, the petitioner appealed the director's decision. The petitioner submitted new letters attesting to the petitioner's intention to employ the beneficiary as a minister, and a copy of the previously submitted IRS letter assigning the petitioner an EIN, but the petitioner's appeal did not address the stated basis for denial.

The appeal was still pending when, on November 26, 2008, U.S. Citizenship and Immigration Services (USCIS) issued new regulations relating to nonimmigrant and special immigrant religious worker petitions. Section 2(b)(1) of the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391, 122 Stat. 4193 (2008), required USCIS to issue these new regulations. On December 15, 2008, the AAO remanded the petition for consideration under the new regulations, and instructed the director to allow the petitioner an opportunity to comply with new documentary requirements under those regulations.

On May 16, 2009, the director sent the petitioner a notice that contained the full text of the regulations at 8 C.F.R. §§ 204.5(m)(7), (8), (10) and (11) – provisions relating, respectively, to the petitioner's detailed attestation; the petitioner's tax-exempt status; intended future compensation; and evidence of past compensation. The director stated that the petitioner must respond to this notice no later than June 15, 2009.

The record contains no response to the director's May 2009 notice. The director denied the petition on July 23, 2009, based on the petitioner's failure to submit the required evidence described in that notice. Following the AAO's instructions, the director certified the decision to the AAO and advised the petitioner: "Pursuant to 8 CFR 103.4(a)(2), you may submit, within 30 days of this notice, a brief or written statement to the AAO." The director did not state that the petitioner could also submit evidence that had been previously requested but not submitted.

In response to the certified denial, the beneficiary, acting as an official of the petitioning church, submits several documents. The beneficiary does not explain the petitioner's failure to respond to repeated previous requests for this evidence.

The submission of this evidence in response to the certified denial does not overcome the stated basis for denial. The director had specifically told the petitioner to submit the required documents no later than June 15, 2009. The director denied the petition because the petitioner failed to do so. The petitioner's later submission of some (but not all) of those documents cannot overcome the correct finding that the petitioner failed to submit them before June 15, 2009.

If USCIS denies a petition based on the petitioner's failure to submit required evidence, the petitioner cannot overcome that finding by submitting the required evidence on appeal, because this later submission does not show that the director's decision was incorrect at the time of the decision. The AAO is under no obligation to consider such evidence. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). Even then, the record still lacks required evidence, such as IRS documentation of its tax-exempt status as required by 8 C.F.R. § 204.5(m)(8) and evidence that the beneficiary's past experience in the United States was authorized under U.S. immigration law as required by 8 C.F.R. § 204.5(m)(11). We note that the beneficiary's Border Crossing Card, reproduced in the petitioner's initial submission, bears the printed legend "U.S. Employment NOT Authorized" (emphasis in original). These are examples, rather than a complete listing, of the evidentiary deficiencies in the record.

The director has given the petitioner numerous opportunities to submit required evidence throughout this proceeding. The record shows that, on every occasion, the petitioner has either submitted irrelevant documentation, or has failed to respond at all. While the petitioner is free to submit a new petition, with the required fee and supporting evidence, the present petition cannot be approved as it now stands, and the time for the petitioner to perfect the petition has passed. We affirm the director's finding that the petitioner failed to submit required evidence, and find that the director properly denied the petition.

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 AAO will affirm the certified decision.

ORDER: The director's decision of July 23, 2009 is affirmed. The petition is denied.