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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



C1

DATE: **APR 26 2011** Office: [Redacted]

FILE: [Redacted]

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, [REDACTED] Service Center, denied the employment-based immigrant visa petition and it 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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.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 “volunteer religious order.” 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 its mobilization director for Asian American churches. The director determined that the petitioner had not established that it is a bona fide nonprofit religious organization.

On appeal, counsel states that the director’s decision “was rendered based on the wrong fact.” Counsel submits a brief and copies of previously submitted documentation with the appeal.

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 September 30, 2012, 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 September 30, 2012, 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 has established it is a bona fide nonprofit religious organization.

The regulation at 8 C.F.R. § 204.5(m)(5) provides, in pertinent part:

*Tax-exempt organization* means an organization that has received a determination letter from the IRS [Internal Revenue Service] establishing that it, or a group that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the IRC of 1986 or subsequent amendments or equivalent sections of prior enactments of the IRC.

Additionally, the regulation at 8 C.F.R. § 204.5(m)(8) provides:

*Evidence relating to the petitioning organization.* A petition shall include the following initial evidence relating to the petitioning organization:

(i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or

(ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or

(iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the [IRC] of 1986, or subsequent amendment or equivalent sections of prior enactments of the [IRC], as something other than a religious organization:

(A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;

(B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;

(C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and

(D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

In her undated letter accompanying the petition, counsel indicated that she was enclosing a letter from the IRS regarding the petitioner's section 501(c)(3) nonprofit status. In her decision, the director stated that the IRS letter submitted by the petitioner referred to the [REDACTED] Christian Church, Inc. The director denied the petition because the letter did not establish that the petitioner was exempt as a nonprofit religious organization. However, the record does not contain the letter referred to by the director and does not include any letter from the IRS that accompanied the petitioner's initial submission.

On appeal, the petitioner provided a copy of the documentation that it stated was part of its original submission. Included in that documentation is a January 14, 1988 letter from the IRS to SIM USA, Incorporated, stating that the IRS had recognized the organization as tax exempt under section 170(b)(a)(A)(i) of the IRC as of September 1980. We withdraw the director's determination. There is no evidence in the record to establish that the petitioner submitted a letter from the IRS referencing a different organization.

Nonetheless, the petition cannot be approved as the record now stands.

The petitioner has not established that the proffered position qualifies as that of a religious occupation. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(5) defines "religious occupation" as an occupation that meets all of the following requirements:

- (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.
- (B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.
- (C) The duties do not include positions that are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible.
- (D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

On remand, the director shall address whether the petitioner has established that the proffered position of mobilization director for [REDACTED] churches is recognized as a religious occupation within the petitioner's denomination and whether the duties of the position as described in the petitioner's September 19, 2007 offer of employment primarily relate to a traditional religious function and are primarily related to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.

Additionally, the regulation at 8 C.F.R. § 204.5(m)(12) provides:

*Inspections, evaluations, verifications, and compliance reviews.* The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

The record reflects that in 2008, a compliance review verification visit was conducted at the petitioner's location in connection with a petition filed by the petitioner on behalf of another beneficiary. The immigration officer found that the petitioner was not in accordance with immigration laws on an issue that may be unrelated to the present petition. Accordingly, the record is remanded to the director to determine if a compliance review or other inspection is appropriate in the instant case.

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.