

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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: **JUN 21 2011** Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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:

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 California Service Center 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, Vermont Service Center, denied the employment-based immigrant visa petition and also denied a subsequent motion to reopen. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision and remand the petition to the California Service Center for further consideration and action.

The petitioner is [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 monk. The director determined that by failing to submit its 2004 and 2005 Internal Revenue Service (IRS) Form 990, Return or Organization Exempt from Income Tax in response to the director's request for evidence, the petitioner failed to establish its ability to pay.

The petitioner submits a letter, additional documentation and copies of all previously submitted documentation in support of 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 petition was filed on June 12, 2006. On July 12, 2006, the director issued the petitioner a request for evidence (RFE) in which he acknowledged receipt of the petition and advised the petitioner:

It is noted[] that the [petitioning organization] and the [redacted] are both listed at the same address, including [the] same suite number. Please provide an explanation along with the following:

Please submit a copy of any building or real property deeds, leases or rental agreements, and other documentary evidence that shows that your religious organization has acquired sufficient physical premises and equipment to support a bona-fide offer of permanent employment. Photographs of your organization, copies of your telephone records for the past six months, utility bills for the past six months, copies of receipts for purchases of equipment, etc., may also [be] submitted.

Submit evidence to establish the net and gross annual income for 2004 and 2005 for the proposed employer at the address specified in the petition. Such evidence should include one of the following:

1. A photocopy of the most current fiscal year Form 990 or 990 EZ (Return of Organization Exempt From Income Tax); or
2. A photocopy of a current financial statement that either has been reviewed or audited by a Certified Public Accountant.

The director informed the petitioner that its response must reach USCIS by October 7, 2006 and that all documents must be submitted together. The record reflects that USCIS received the petitioner's September 23, 2006 response to the RFE on September 26, 2006. However, on November 20, 2006, the director, finding that the petitioner had failed to respond to the RFE, denied the petition for abandonment.

On December 1, 2006, the petitioner moved to reopen the decision and provided a copy of the U.S. Postal Service (USPS) Track & Confirm results confirming receipt of the information by the Vermont Service Center on September 26, 2006. The director granted the motion to reopen but again denied the petition stating that the petitioner failed to provide copies of IRS Form 990 as requested and that:

While the record includes an HSBC letter dated September 19, 2006 the documentation does not include copies of the Form 990 for 2004 & 2005.

It is further noted that the record includes a copy of the Form I-797 Notice of Action which is Service Center date[] stamped November 20, 2006. A review of the documentation includes the same documentation submitted with the motion and also does not include copies of the Form 990 for 2004 & 2005.

The petitioner appealed the director's decision on April 9, 2007 and provided copies of all of the documentation it had previously submitted to the Vermont Service Center. The petitioner also requested oral argument, stating:

Due to the confusion and inconsistency of the reliability of the US Postal Service and the breakdown in communication regarding submission of documentation in an accurate and timely manner, it is imperative that I have an opportunity to argue this case to avoid denial due to any administrative error.

The regulations provide that the requesting party must explain in writing why oral argument is necessary. USCIS has the sole authority to grant or deny the request and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the petitioner identified no unique factors or issues of law to be resolved. Moreover, the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

A careful review of the record indicates that the petitioner's September 26, 2006 response to the RFE included the petitioner's statement regarding its address, a letter from The [REDACTED] a letter from its bank, and copies of Internal Revenue Service (IRS) Form 990 for the years 2004 and 2005. The record also contains several photographs purportedly of the petitioner's activities. The petitioner apparently failed to attach a copy of the Form I-797 to its response as instructed by the director; however, it did include the USCIS receipt number. It appears that because of this, the petitioner's response was not immediately associated with the record of proceedings.

In a November 14, 2006 letter, the petitioner requested "urgent consideration" of the petition as the beneficiary's R-1 nonimmigrant religious worker status would expire on December 11, 2006. The petitioner stated that it was again providing the documents that it submitted on September 25, 2006 and apologized for not providing the "identical" pictures that it had previously provided. The petitioner apparently attached the Form I-797 to its inquiry and provided a copy of the USPS Express Mail receipt, the USPS tracking results indicating that the package was received by the Vermont Service Center, and copies of the documentation it had previously provided. However, this documentation did not include the copies of IRS Form 990.

In denying the petition on motion, the director found that the petitioner had failed to provide copies of the IRS Form 990 in response to the RFE; however, the director referenced the information that the petitioner submitted with its inquiry rather than the petitioner's response to the RFE.

The record reflects that the petitioner timely responded to the director's RFE and submitted all of the requested documentation. Nonetheless, the petition may not be approved as the record now stands.

As required under section 2(b)(1) of the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391, 122 Stat. 4193 (2008), USCIS promulgated a rule setting forth new regulations for special immigrant religious worker petitions. Supplementary information published with the new rule specified:

All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule. If documentation is required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information. 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008).

Section 557(b) of the Administrative Procedure Act (APA), 5 U.S.C. § 557(b), provides that an initial agency decision is not final if "there is an appeal to, or review on motion of, the agency within time provided by rule." Because there was a pending appeal, USCIS had not issued a final decision on the instant proceeding. Accordingly, the matter was still pending and therefore subject to the new rule.

The matter is therefore remanded for consideration under the new rule. The director shall specifically address the beneficiary's qualifications for the position, his qualifying work experience, and how the petitioner intends to compensate the beneficiary. Although the petitioner submitted copies of its IRS Forms 990, it is not clear that the returns were filed with the IRS or were prepared specifically for the purpose of this petition. The director should also inquire into the translation of the document attesting to the beneficiary's ordination as it appears to have been provided by the beneficiary and therefore lacks sufficient credibility.

ORDER: The matter is remanded to the director, California Service Center, for the issuance of a request for evidence (if necessary) and a new decision in accordance with the requirements of the new regulation published at 73 Fed. Reg. 72276 (Nov. 26, 2008). If the new decision is adverse to the petitioner, it shall be certified to the AAO for review.