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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

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 03 2011

IN RE: Petitioner: [redacted]
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:

[redacted]

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,

Mari Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, the AAO will remand the petition for further action and consideration.

An official of the petitioning entity describes the organization as "a Christian ministry with the objective of raising churches." 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 an associate pastor. The director determined that the petitioner had not established its tax-exempt status.

On appeal, the petitioner submits arguments from counsel and various supporting exhibits.

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;
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> (ii) seeks to enter the United States--
>
> > (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination . . . ; and
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> (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 U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(8)(i) requires the petitioner to submit a currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization.

The petitioner filed the Form I-360 petition on July 10, 2007. The initial filing included a copy of a January 25, 2002 IRS determination letter addressed to the petitioner at [redacted]. State corporate documentation identified the petitioner's "Principal Address" as [redacted] an address that also appeared on an IRS Form 1099-MISC Miscellaneous Income statement that the petitioner issued to the beneficiary to reflect his 2006 compensation. An April 4, 2007 letter from [redacted], identified as the petitioner's president and senior pastor, showed the address [redacted], but it is not clear if this was the petitioner's address or [redacted] home address.

On November 7, 2007, the director issued a request for evidence (RFE), stating that the petitioner's initial submission did not sufficiently establish the petitioner's tax-exempt status. The director stated: "The tax exempt certification letter indicates an organization with a different address other than the petitioning church's current address. Therefore, provide evidence that your religious organization, located at your current address, is the same organization listed on the tax exempt certification letter" (director's emphasis).

In response, the petitioner submitted another copy of the January 25, 2002 IRS determination letter. The petitioner also submitted a copy of a 1998 letter from the IRS, assigning the petitioner an employer identification number (EIN). The IRS addressed the letter in care of "[redacted]." The EIN shown on this letter matches the EIN on the 2002 IRS recognition letter; on the 2007 IRS Form 1099-MISC issued to the beneficiary; and on the Form I-360.

In a January 28, 2008 letter, [redacted] stated: "Our current address is [redacted]. We have offices in Hialeah. We are in the process of acquiring a building for our church." A copy of a November 2006 lease agreement showed that the petitioner leased the [redacted] site from [redacted]. The period of the lease was from November 1, 2006 to October 31, 2007. The lease allowed the petitioner to use the church's "Fellowship Hall" for six hours a week (Fridays 8:00 – 10:00 p.m., and Sundays 2:00 – 6:00 p.m.).

On May 11, 2009, the director denied the petition, stating that the petitioner had not established that it is the same entity that the IRS recognized as tax-exempt in 2002.

On appeal, the petitioner submits additional copies of previously submitted IRS documents, and a notarized letter from [redacted] dated June 2, 2009, stating that the petitioner "has moved to a new location due to the growth of the ministry and we are located at [redacted], but we are the same church, what has changed is **only the address**" (emphasis in original). The petitioner submits photographs of the new site and a copy of the lease agreement.

The petitioner submitted a copy of IRS Form 8822, Change of Address, indicating that the petitioner had moved from [redacted]. The notice is dated May 15, 2009, after the denial date, and there is no evidence that the petitioner had ever notified the IRS of previous changes of address. Nevertheless, the director, in the denial notice, did not cite any statute or IRS regulation indicating that a failure to timely report a change of address jeopardizes an entity's tax-exempt status.

The record contains persuasive evidence that the petitioning entity, led by [redacted] is the same entity that previously received an EIN and recognition of tax-exempt status from the IRS. We will therefore withdraw the director's finding that the petitioner failed to establish its tax-exempt status. Because this was the director's only stated ground for denial, we will also withdraw the denial decision.

Nevertheless, we cannot approve the petition at this time, owing to other deficiencies and discrepancies in the record. Any new decision by the director must address these issues. The AAO

may identify additional grounds for denial beyond what the Service Center identified in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

While the petition was pending, USCIS published 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." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). Therefore, the revised regulations apply to the matter at hand.

The revised regulation at 8 C.F.R. § 204.5(m)(7) require the intending employer to execute a detailed attestation, containing information about the employer, the beneficiary, and the job offer. The petitioner has not completed this required attestation. Other communications from the petitioner contain some of the required information, but not all of it.

The USCIS regulations at 8 C.F.R. §§ 204.5(m)(10) and (11) both relate to the beneficiary's compensation:

> (10) *Evidence relating to compensation.* Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.
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> (11) *Evidence relating to the alien's prior employment.* Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work, must have occurred after the age of 14, and if acquired in the United States, must have been authorized under United States immigration law. If the alien was employed in the United States during the two years immediately preceding the filing of the application and:
>
> (i) Received salaried compensation, the petitioner must submit IRS documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of income tax returns.
>
> (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.

In a letter dated April 15, 2007, [redacted] stated that the petitioner "will pay [the beneficiary] a salary of 36,000 [dollars] a year. . . . We will also continue to provide housing and transportation" to the beneficiary." By stating that the petitioner will pay the beneficiary $36,000 per year, and "will also continue to provide housing," [redacted] effectively claimed that the petitioner already provided the beneficiary's housing and transportation. In a letter dated June 8, 2007, [redacted] stated that the beneficiary received $23,250 per year in 2005 and 2006, raised to $36,000 in 2007. [redacted]. [redacted] also stated that the petitioner paid the beneficiary in cash until December 2005, and by check thereafter.

The beneficiary's uncertified, original (not copied) 2006 income tax return listed the beneficiary as "self-employed" with net income of $13,191. The beneficiary claimed to have taken in $23,250 in gross income, and that same amount appears on the IRS Form 1099-MISC for that year. The beneficiary also, however, claimed to have spent $7,454 of that amount on "Car and truck expenses." If the beneficiary was responsible for covering his own transportation expenses, then the petitioner was not providing the beneficiary with transportation over and above his salary.

In the 2007 RFE, the director instructed the petitioner to "submit **well-documented** evidence that it provided all of the beneficiary's living expenses during 2005, 2006, and 2007." In response, the petitioner submitted a January 15, 2008 letter from [redacted], which repeated, word for word, his earlier letter of June 8, 2007. The petitioner also submitted a letter from accountant [redacted] indicating that the beneficiary "had an annual salary of $36,000 during 2007."

Photocopied bank statements and processed checks from 2006 and 2007 show that the petitioner paid the beneficiary $2,000 per month, later increased to $3,000 per month. Other checks show occasional smaller amounts, such as a $300 "love offering" and a $400 "reimbursement" for unspecified expenses.

Anonymous annotations on one of the beneficiary's own bank statements, from September 2007, indicate that two $60 payments were for a "school bus" and a payment of $1,475 was for "rent (house)." A November 26, 2005 lease agreement for the beneficiary's apartment confirms the $1,475 monthly rent figure, and shows that the beneficiary, not the petitioner, holds the lease for the apartment. The copies of processed checks submitted by the petitioner did not show $1,475 payments to cover the beneficiary's monthly rent, and the petitioner's 2006 financial statement did not show that the petitioner paid the beneficiary's rent that year. The beneficiary's rent adds up to $17,700 per year, but the highest non-salary expense on the petitioner's financial statement was $2,050 for "Supplies."

The available evidence does not support the petitioner's claim that it has covered the beneficiary's housing and transportation in addition to (rather than as part of) the beneficiary's $3,000 monthly salary. Therefore, we have no reason to believe that the petitioner will spontaneously begin paying for the beneficiary's housing in the future. The petitioner has not shown that the beneficiary's compensation has matched, or will match, the terms that [redacted] has described.

Finally, the USCIS regulation at 8 C.F.R. § 204.5(m)(12) reads:

> *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 indicates that a USCIS officer attempted three site inspections at St. Andrew's Lutheran Church in August 2008, but was never able to verify the petitioner's presence there.

From the fragmentary evidence available, it appears that the petitioner may have left St. Andrew's before August 2008. As early as January 2008, [redacted] had informed USCIS that the petitioner, though still on [redacted], was "in the process of acquiring a building for our church." The record shows that the petitioning church moves frequently, and had definitely left [redacted] before filing the appeal in June 2009. Indeed, it has moved again at least once after filing the appeal. The record contains a July 30, 2010 lease for the property at [redacted].

Clearly, the director has already determined that a site inspection is necessary for this petition. Past efforts at site inspection and compliance verification have failed, but this is likely because the petitioner had already moved to a new location. Therefore, the failure of the August 2009 site visits is not definitive evidence of eligibility. Nevertheless, the director, by regulation, may not approve the petition until and unless the petitioner has passed a site inspection and/or compliance review at its most recent address of record. (For this reason, it is obviously in the petitioner's interest to notify USCIS promptly of any future change of address. The United States Postal Service does not automatically advise USCIS of changes of address; the petitioner must notify USCIS directly.)

Therefore, the AAO will remand this matter for a new decision. 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.