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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: **JUL 05 2005**
EAC 03 087 53710

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:
[Redacted]

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.

Maig Johnson

2 Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a church. 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 minister. The director determined that the petitioner had not established that it is a qualifying tax-exempt organization.

The petitioner, through counsel, submits a timely appeal with additional evidence.

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 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 sole issue raised by the director is whether the petitioner is considered a qualifying tax-exempt religious organization. The regulation at 8 C.F.R. §204.5(m)(2) defines a "bona fide nonprofit religious organization in the United States" as an organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 (the Code) as it relates to religious organizations, or one that has never sought such exemption but establishes to the satisfaction of Citizenship and Immigration Services (CIS) that it would be eligible if it had applied for tax-exempt status.

The regulation at 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence 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 [IRS] to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

In support of the petition, the petitioner stated that the IRS “recognizes the church as a non-profit religious institution under section 501(c)(3).” The petitioner, however, submitted no documentation from the IRS to support this statement and instead submitted a copy of the Massachusetts Department of Revenue Certificate of Exemption. Such evidence is insufficient to satisfy the requirements of the regulation.

On June 6, 2003, the director requested further evidence of the petitioner’s tax-exempt status. The petitioner responded on August 29, 2003, and submitted copies of letters from the IRS and the headquarters of the denomination. The letter from the IRS, dated March 8, 1980, indicates that Faith Christian Fellowship International Church Inc. was granted a group exemption number. The letter makes no reference to the petitioner’s tax-exempt status under section 501(c)(3) of the Code.

The letter from Lonnie R. Hilton, Vice President and National Director of Faith Christian Fellowship International, dated August 30, 2000, indicates that the petitioning church “is an affiliate (or subordinate) church of the Faith Christian Fellowship Int[ernational]” and as such “operates under the group 501(c)(3) exemption of FCF Int’l.” As indicated previously, the group exemption letter from the IRS makes no reference to section 501(c)(3) of the Code, or to Faith Christian Fellowship International’s or the petitioner’s exemption under this provision. Although this evidence sufficiently established the relationship between Faith Christian Fellowship International and the petitioning church, the record lacked documentary evidence of Faith Christian Fellowship International’s tax-exemption under section 501(c)(3) of the Code. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Accordingly, the director denied the petition on October 27, 2003, finding that the petitioner failed to establish it is a qualifying tax-exempt organization.

On appeal, the petitioner, through counsel, submits letters from its denominational headquarters and the IRS. The letter from the IRS, dated February 4, 1980, indicates that the IRS recognizes Faith Christian Fellowship International Church, Inc. as exempt from federal income tax under section 501(c)(3) of the Code. The letter from the petitioner’s headquarters reiterates the relationship between Faith Christian Fellowship International Church, Inc. and the petitioning church.

We find the petitioner’s appellate submission overcomes the sole ground for denial as determined by the director. Specifically, the petitioner has established that Faith Christian Fellowship International, Inc. is a 501(c)(3) tax-exempt organization, that it had obtained such tax-exemption at the time of filing, and that the group tax-exemption granted to Faith Christian Fellowship International, Inc., covers the petitioning church.

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 met that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained.