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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

C1

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAR 1 [illegible]
EAC 00 271 50915

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion to reopen will be granted, the previous decision of the AAO will be affirmed and the petition will be denied.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Citizenship and Immigration Services (CIS) policy. 8 C.F.R. § 103.5(a)(3).

The director determined that the petitioner had not established that the position qualified as that of a religious worker within the meaning of the statute and regulation. On appeal, the AAO stated that the "duties of the proposed position were described as assisting in organizing retreats and performing outreach services to member churches of the Diocese." The AAO, therefore, determined that the evidence was insufficient to establish that the position qualified as that of a religious occupation. We withdraw that portion of the AAO's decision.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

CIS therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In its letter of June 12, 2000, the petitioner stated that, in the proffered position, the beneficiary would continue to perform the following duties:

> give spiritual assistance to the communities that presently exist in the parishes; continue catechizing in the parishes that so request it; from said catechesis new communities will arise which will make [sic] christian initiation; formation retreats, follow-up retreats, and retreats of stages in christian initiation and of baptismal scrutiny will be carried out as they are presently with the aforementioned communities; meeting, training and follow up to the

> new catechists be [sic] means of retreats; meetings with the Bishops and parish priest of the dioceses of Puerto Rico for orientation and following up on the communities; promotional encounters for religions vocations; encounters with the trainers and seminarists of the dioceses that so desire and interdiocesan encounters with the communities several times a year.

In response to the director's request for evidence (RFE) dated December 22, 2000, the petitioner submitted a letter from of the Parish at San Roque in Madrid, Spain. Mr. states that the beneficiary's duties with the petitioner included the following: a two-month period of catechism at the parish to help the initiates for Christian initiation; weekend "convivences" with those people after catechesis; follow up with the Christian communities after the two-month preaching and "convivence;" meetings with bishops, seminary directors, parishes and priests in Christian initiation and different gatherings to promote and help priests and sisters in their vocations.

We find that the record is sufficient to establish that the position is a religious occupation within the meaning of the statute and regulation. Nonetheless, the petition may not be approved as the record presently stands.

In its previous decision dismissing the appeal, the AAO found that the petition was not approvable based on additional grounds not cited in the director's decision. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial 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 Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis). Because the AAO dismissed the appeal on multiple alternative grounds, the petitioner can succeed on motion only if it overcomes all of the AAO's enumerated grounds. *See, e.g., Spencer Enterprises, Inc. v. U.S.* 229 F. Supp.2d at 1037. These additional grounds raised by the AAO in its previous decision were the petitioner's failure to establish that it was exempt from taxation as a bona fide nonprofit religious organization, its failure to establish that the beneficiary had been working continuously in a qualifying religious occupation or vocation for two full years preceding the filing of the visa petition, and its failure to establish that the petitioner had extended a qualifying job offer to the beneficiary.

We withdraw that portion of the AAO's decision finding that the petitioner had not extended a qualifying job offer to the beneficiary The evidence sufficiently establishes that a qualifying job offer was tendered.

The regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

> (3) *Initial evidence*. Unless otherwise specified, each petition for a religious worker must be accompanied by:
>
> (i) Evidence that the organization qualifies as a nonprofit organization in the form of either:
>
> (A) Documentation showing that it is exempt from taxation in accordance with § 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 to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

The petitioner must either provide verification of individual exemption from the Internal Revenue Service (IRS), proof of coverage under a group exemption granted by the IRS to the denomination, or such documentation as is required by the IRS to establish eligibility as a tax-exempt nonprofit religious organization. Such documentation to establish eligibility for exemption under section 501(c)(3) includes: a completed IRS Form 1023, a completed Schedule A attachment, if applicable, and a copy of the articles of organization showing, *inter alia*, the disposition of assets in the event of dissolution.

The petitioner submitted insufficient evidence to meet this statutory requirement. In response to the RFE, the petitioner submitted a 1976 letter from the Bishop of Ponce, which addressed the legal status of the Roman Catholic Church in Puerto Rico. The letter does not satisfy the statutory or regulatory requirements.

In his RFE, the director instructed the petitioner to submit evidence in accordance with the regulations. In response, the petitioner resubmitted the letter from the Bishop of Ponce.

On motion, the petitioner submits a June 3, 1999 letter from the IRS to the Associate General Counsel of the United States Catholic Conference, informing her that the Roman Catholic Church had been granted a group tax-exemption in 1946 for its subordinate activities that were listed in the *Official Catholic Directory 1946*, and that the exemption had been updated annually to cover subordinate activities added to or deleted from the directory. The petitioner also submitted a copy of an excerpt from *The Official Catholic Directory* for 2001, which lists the petitioner.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on motion. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on motion.

The record before the director did not establish that the petitioner was a bona fide nonprofit religious organization exempt from taxation as required by the statute and regulation.

The AAO also found that the petitioner had not established that the beneficiary had been continuously employed in a qualifying religious occupation or vocation for two full years prior to the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States." The regulation indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition."

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

> (ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:
>
> > (A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on September 5, 2000. Therefore, the petitioner must establish that the beneficiary was continuously working in the religious occupation throughout the two-year period immediately preceding that date.

As noted by the AAO in its previous decision, the petitioner submitted no documentary evidence, such as canceled checks, pay vouchers or any other evidence to corroborate the beneficiary's prior employment. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

On motion, the petitioner submitted statements from Mr. [redacted] of the parish of San Roque Church in Madrid, and from Timothy P. Broglio, Apostolic Delegate for Puerto Rico, who state that the beneficiary has worked full-time as a catechist.[1] However, the petitioner submitted no further documentary evidence that the beneficiary was employed full-time as a catechist during the qualifying two-year period. *Id.*

The petitioner's motion has caused the AAO to reopen and reexamine the record. Accordingly, it is further noted, beyond the previous decisions, that the petitioner has not established that is has the ability to pay the beneficiary the proffered wage.

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[1] We note that in earlier correspondence, [redacted] was identified as [redacted] The record is unclear as to the correct spelling of this name; however, the documents clearly indicate that there is only one individual.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner has submitted no evidence of this regulatory requirement. This constitutes an additional ground for denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. As no new evidence has been presented to overcome all of the grounds for the previous dismissal, the previous decisions of the AAO and the director will be affirmed. The petition is denied.

ORDER: The AAO's decision of May 6, 2002 is affirmed. The petition is denied.