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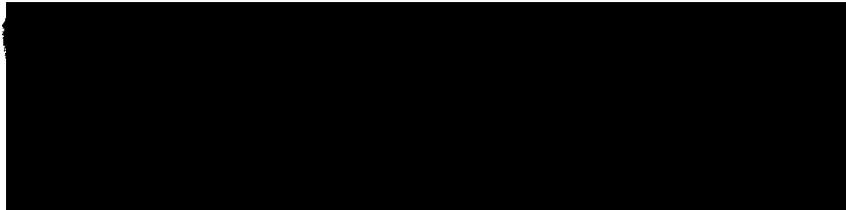
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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **OCT 18 2005**
SRC 01 096 55688

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:

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 Director, Texas Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

For the purposes of this decision, the term “counsel” shall apply equally to the present attorney of record, as well as to other attorneys from the same firm who have previously offered arguments in this proceeding.

The petitioner identifies itself as a Hindu temple. 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 chief Pujari, or priest. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a Pujari immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary.

On appeal, the petitioner submits a brief from counsel and copies of previously submitted documents. Counsel argues that the director had already approved the petition, and that the director “did not offer any supporting evidence to show a clear deficiency in the prior-approved petition.”

Section 205 of the Act, 8 U.S.C. § 1155, states: “The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.”

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Esteime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for “good and sufficient cause” where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner’s failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Esteime*, 19 I&N 450 (BIA 1987)).

By itself, the director’s realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 582.

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 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).

We shall first address the issue of the job offer. [REDACTED], treasurer of the petitioning entity, states: "We seek to employ [the beneficiary] as [REDACTED] (Minister) indefinitely, at a salary of \$9600 plus housing allowance and *Daxina* . . . [which is] a Hindu term for tips paid to priest, for performing various religious and social rituals at their homes and at [the petitioning entity]."

The director approved the petition on April 15, 2002, but subsequently determined that the petition had been approved in error, and issued a notice of intent to revoke on April 23, 2004.

The director questioned whether the petitioner had extended a qualifying job offer, noting that some documentation refers to the beneficiary as a contractor rather than as an employee. The director also found that the beneficiary's acceptance of *daxina*, or tips, amounts to solicitation of funds. A worker supported solely by solicitation of funds cannot qualify for the classification, pursuant to 8 C.F.R. § 204.5(m)(4).

We note first that the beneficiary's acceptance of *daxina* in return for performing wedding or similar ceremonies is not a "solicitation of funds" and is not contrary to the requirements of the regulation that the beneficiary's entrance into the United States must be solely for the purpose of working as a minister.

Additionally, the petitioner's recognition that it should have paid the beneficiary as an employee as opposed to a self-employed individual in the past does not invalidate the job offer extended to the beneficiary. The petitioner stated that the position would have an annual salary of \$9,600 plus a housing allowance. In its

response to the Notice of Intent to Revoke, the petitioner stated that the beneficiary's working hours could extend from 8:00 am to 10:00 pm, depending on the needs of the petitioner's members.

The director, in the notice of revocation, appears to have confused and combined the separate definitions of "minister" and "religious occupation" found in Citizenship and Immigration Services (CIS) regulations at 8 C.F.R. § 204.5(m)(2). The beneficiary's position, as described, is ministerial in nature and therefore any provisions specific to a religious occupation (as defined) would not apply.

The evidence sufficiently establishes that the petitioner has extended a qualifying job offer to the beneficiary; that is, the terms of the job offer are facially consistent with a finding of eligibility. As we shall discuss presently, however, this finding does not reverse the revocation of the approval of the petition.

The regulation at 8 C.F.R. § 204.5(m)(1) 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." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on February 5, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a Pujari throughout the two years immediately prior to that date.

Sunil Patel describes the beneficiary's past experience:

[The beneficiary] has been the [REDACTED] at [the petitioning entity] in R-1 status since late 2000. Before he came to us he was [REDACTED] at the Hindu Center in Lake City, Georgia in R-1 status from October 1, 1999 to October 31, 2000; and Chief Priest at the Hindu Center of Charlotte, North Carolina from October 10, 1998 to September 30, 1999.

An official of the Hindu Center of Charlotte affirms, in a March 4, 2000 letter, that the beneficiary "was employed as the chief priest from October 10th, 1998 to September 31st [sic], 1999."

To substantiate the beneficiary's claimed employment at Shaktidham¹ in Lake City, Georgia, the petitioner submits a copy of that center's job offer letter to the beneficiary, dated September 15, 1999, and a letter from the center's secretary, dated October 3, 1999, stating that the beneficiary "has been hired as a priest." The first document predates the claimed employment itself, and the second document was executed only days after the beneficiary began working at the Georgia temple. These letters, therefore, cannot serve to confirm more than three days of employment at the temple in Georgia. Similarly, documentation that the beneficiary held R-1 nonimmigrant status to work at the Georgia temple through September 7, 2000 does not establish that the beneficiary actually worked; it shows only that he received advance authorization to do so.

¹ The Hindu Center in Lake City, Georgia, is also known as the "Shaktidham" and the "Shree Shakti Mandir of Atlanta" in the supporting documents.

The director issued a notice of intent to revoke on April 23, 2004, in which the director stated that the petitioner had not shown that the beneficiary was a paid, full-time Pujari throughout the two-year qualifying period. The director requested more detailed letters from the beneficiary's past employers, as well as Form W-2 Wage and Tax Statements to corroborate past payments to the beneficiary. In response to the notice, counsel argues that the director did not allow the petitioner sufficient time to obtain further documentation, and that the beneficiary's former employers have already "provided documentation to that effect," *i.e.*, confirming the beneficiary's past employment. As discussed above, the initial documentation from the past employer in Georgia shows only that the beneficiary *started* working there, without indicating when the employment *ended*.

The petitioner submits copies of Form 1099-MISC Miscellaneous Income Statements, showing that the petitioner paid the beneficiary "nonemployee compensation" \$4,000.00 in 2000, \$9,600.00 in 2001, \$9,600.00 in 2002 and \$8,800.00 in 2003. Of the four years covered by these forms, only the first and part of the second fall within the 1999-2001 qualifying period. The petitioner does not explain the apparent drop in the beneficiary's compensation, from \$2,000 per month in 2000² to \$800 per month in 2001 and 2002, to \$733 per month in 2003.

A Form 1099-MISC from Shree Shakti Mandir of Atlanta, Lake City, Georgia, indicates that the beneficiary earned \$15,728.00 there in 2000. There is no documentation of what that entity paid the beneficiary in 1999.

The beneficiary reported \$21,728 in "business income" on his 2000 tax return. The Forms 1099-MISC from the petitioner and the Georgia temple account for \$19,728; nothing in the record resolves this discrepancy. Furthermore, the 2002/1999 Form W-2 from the temple in Charlotte indicates that \$1,722.00 was withheld from the beneficiary's wages for various taxes. On his 1999 Form 1040EZ tax return, however, the beneficiary did not report any withholding. Thus, the Form W-2 conflicts with the tax return, and both documents were executed in 2003, several years after the payments they purport to document. These untimely-prepared tax documents have minimal value as evidence of wages paid to the beneficiary.

The director had requested detailed records to substantiate claims of past work by the beneficiary. In response, Neil Patel, treasurer of the petitioning organization,³ states that Hindu temples do not customarily maintain such records. We note, here, that the petitioner has submitted a copy of the constitution of the temple in Charlotte. Article VII, section 9 of this constitution establishes an Audit Committee that is required "to audit the accounts of the Center annually and present a report to the annual general membership meeting." This requirement suggests the existence of detailed financial records, which nevertheless are not reflected in the petitioner's submissions from the Charlotte temple.

A Form W-2 Wage and Tax Statement indicates that the Hindu Center in Charlotte paid the beneficiary \$11,250.00 in 1999. The form used is dated 2002; the date "2002" has been struck out with two lines of ink and the date "1999" written beside it. The form shows the beneficiary's address in Chattanooga, where he lived in 2003, rather than in Charlotte, where he lived in 2000. Because of the use of the Chattanooga

² The petitioner has indicated that the beneficiary worked elsewhere until October 31, 2000, and therefore the Form 1099-MISC that the petitioner issued to the beneficiary for 2000 can only cover two months of payments during that year.

³ It is not clear whether Neil Patel is the same individual as Sunil Patel, or his successor as treasurer.

address, and the fact that the date "2002" remains plainly visible, with no apparent effort made to completely obscure the date or replace it with a printed "1999," we do not believe that any party has made a conscious effort to fraudulently alter a 2002 Form W-2, to make it appear to be a 1999 Form W-2. Rather, it appears that the temple in Charlotte did not report the beneficiary's income in 1999, and has since attempted to do so via the version of the Form W-2 available at the time (dated 2002). We conclude that the alteration was intended simply to show that the form refers to income earned in 1999, rather than to conceal the true date of the form. While the alteration does not appear to show any fraudulent intent, at the same time it is clear that this Form W-2 does not originate from the early 2000 tax reporting period for 1999, and therefore it cannot be considered as contemporaneous evidence of compensation. Rather, it appears to be an after-the-fact attempt to create a "paper trail" that hitherto did not exist, the temple's mandatory annual audits notwithstanding.

The same can be said of the beneficiary's tax returns for the years 1999 to 2002, all of which were prepared on July 1, 2003, significantly after they were due. Only the beneficiary's 2003 return was timely prepared, in March 2004. The returns indicate that the beneficiary owed a total of \$7,725.00 in taxes for wages earned between 2000 and 2003. The beneficiary's signature does not appear on the copies of the returns in the record, and there is no evidence that the beneficiary has paid these back taxes (which equal almost a year's earnings at the most recent, reduced rate).

Another altered document in the record is from the petitioner itself. The printed date on a 2002 Form 1096 Annual Summary and Transmittal of U.S. Information Returns has been altered to read "2000." This demonstrates that the petitioner, like the Charlotte temple, did *not* report the beneficiary's wages at the time, but later created the appearance of having done so, at a time when the beneficiary sought immigration benefits based on that claimed employment. The record contains only this one Form 1096, and therefore we cannot determine when, if at all, the petitioner reported the beneficiary's earnings in subsequent years. Because the petitioner clearly did not report the beneficiary's claimed 2000 earnings with a 2000 Form 1096, we have no reason to presume that the petitioner timely reported the beneficiary's earnings in other years. Under the circumstances, the Forms 1099-MISC do not, by their very existence, prove that the petitioner reported the beneficiary's earnings to the IRS. The altered Form W-2 from the Charlotte temple proves that this problem is not confined to the petitioning entity.

The record contains several Forms 990 Return of Organization Exempt from Income Tax filed by the petitioner. The 2000 and 2001 returns cover the portion of the qualifying period during which the petitioner claims to have employed the beneficiary. Neither Form 990 reflects any amount under "Compensation of officers, directors, etc.," or under "Other salaries and wages." No entries on the Forms 990 readily correspond with the amounts shown on the Forms 1099-MISC that purport to reflect payments to the beneficiary. Unlike the Forms 1099-MISC, the Forms 990 appear to have been timely filed.

The petitioner offers no explanation for its apparent failure to report the beneficiary's earnings before 2003. The petitioner has indicated that the beneficiary worked legally, under an R-1 nonimmigrant visa, and therefore there would be no incentive to conceal unlawful employment. Rather, the complete absence of *contemporaneous* evidence of payment, coupled with the submission of altered documents to account for past payments, is consistent with an attempt to create the *appearance* of past payments that were not actually made. This would also explain why the petitioner's claimed payments to the beneficiary in 2000 were not

reported on Form 1096 until at least 2002 (if, indeed, they were reported at all). Given the discrepancies in this part of the record, we do not accept the very *existence* of the various tax forms as proof that the employers actually *filed* those forms. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988).

The petitioner submits a copy of his November 15, 1998 employment contract with the temple in Charlotte. This temple document delineates qualifying religious duties. It also indicates that the beneficiary was under contract for a term of four years, and that if he left the temple in Charlotte prior to the end date, he would be required to pay the temple "\$2000 for expenses incurred to bring Employee to USA" unless he returned to India. The beneficiary left this position after about one year, and did not return to India, which would seem to trigger the \$2,000 payment to the temple; the record does not show whether the beneficiary paid this amount.

The only other contemporaneous documentation of the beneficiary's work in Charlotte is an agenda from a June 15, 1999 meeting, containing the notation "Consult [the beneficiary] for details," and a December 1998 newsletter containing a reference to the beneficiary as the "Hindu Center Pujari." An undated membership directory from the Charlotte temple (printed before 2000 but no earlier than 1998⁴) does not show the beneficiary's name in the alphabetical list of members. The directory does, however, list the chairman of the temple's board of trustees; the chairman of the temple's Pujari committee; and individuals named on the June 15, 1999 agenda mentioned above. Therefore, status as a temple official plainly did not preclude a listing in the directory.

The director revoked the approval of the petition, in part because "the evidence submitted is insufficient to establish that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for the two-year period immediately preceding the filing date of the petition."

On appeal, counsel argues that the petitioner has submitted a "mountain of evidence" to support its claim, and that "there can be no serious doubt" of the beneficiary's eligibility. Counsel contends that the director exaggerated "slight deficiencies in the responses to burdensome requests for evidence." The director, in the notice of revocation, specifically took note of the petitioner's submission of altered documents as described above. Counsel's appellate brief does not even acknowledge these alterations, let alone explain why these alterations should be dismissed merely as "slight deficiencies." (Counsel does cite the director's "increasing skepticism" based on "what may be valid concerns about fraud in the category" of religious workers.) The truly contemporaneous tax documents within the record do not match the newly-created documents that are intended to buttress the petitioner's claim that the beneficiary worked and was paid as claimed. These deficiencies are not "slight"; rather, they are central to the issue of the credibility of the petitioner's claims.

It appears that the beneficiary has worked as a Pujari to some extent for the petitioner and for other temples, but we find that the petitioner has not produced any reliable contemporaneous evidence that the beneficiary performed this work on a paid, full-time basis, and that documents created in 2003 to create the appearance of

⁴ A greeting printed in the directory offers "[b]est wishes to everyone for the year 1999 and for the millennium 2000" and contains an advertisement with a 1998 copyright date. The most likely publication period, therefore, appears to be late 1998 or early 1999, which coincides with the beneficiary's claimed dates of employment at the temple.

past payments are unreliable and raise more questions than they answer. Noting that the previously submitted employment letters were not probative, the director reasonably requested more detailed letters and tax forms to corroborate the claimed two years of employment. The evidence submitted in response to the notice has been altered and presents further inconsistencies.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d at 694. However, anytime a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. In this case, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the beneficiary's claimed two years of experience as a Pujari is not credible. Accordingly, the petitioner has not established the beneficiary's eligibility for the requested immigrant visa classification.

Beyond the decision of the director, we note a critical issue regarding the petitioner's tax-exempt status. While this issue did not figure in the decision itself, the director did raise the issue in the notice of intent to revoke, and counsel discusses the issue on appeal.

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 to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

In the introductory letter submitted with the initial filing, counsel cites a November 8, 1984 determination letter from the Internal Revenue Service (IRS) as evidence that the petitioner is exempt, or qualifies for exemption, under section 501(c)(3) of the Internal Revenue Code of 1986 (the Code). The IRS letter, however, does not establish that the petitioner is, or qualifies to be, exempt under section 501(c)(3) of the Code. The letter states that the petitioner is exempt from taxation under section 501(c)(7) of the Code. This section pertains to social clubs. The IRS letter is, therefore, *prima facie* evidence that the petitioner is not tax exempt under section 501(c)(3) of the Code.

The IRS determination letter also indicates that the petitioner is required, each year, to file a Form 990 return. Churches are not required to file Form 990 returns. 26 CFR § 6033(a)(2)(A)(i). Therefore, this is further evidence that the IRS does not consider the petitioner to be a 501(c)(3) church. The petitioner has, at various

times, submitted copies of its Form 990 returns from 1997 through 2003. Each of these Forms 990, up to and including the 2003 return, indicates that the petitioner is tax-exempt under section 501(c)(7) of the Code. On the 2002 Form 990, the petitioner indicated that its “primary exempt purpose” is as a “religious social organization.” The “primary exempt purpose” line has been left blank on other Forms 990.

The director, in the notice of intent to revoke, erroneously stated that an organization must be classified as a “church” under section 170(b)(1)(A)(i) of the Code in order to be a qualifying employer. This interpretation is overly strict. The director was correct, however, in observing: “The statute specifically states that the organization must be qualify [*sic*] as a nonprofit organization in accordance with section 501(c)(3).” A religious organization need not be a “church” *per se* (for instance, it could be a seminary), but the organization *must* be tax-exempt under section 501(c)(3) of the Code.

The director instructed the petitioner to “[s]ubmit a copy of the IRS’s 501(c)(3) certification for the petitioning organization including a copy of the actual request for certification Form IRS 1023.” The director’s request for “a copy of the *actual* . . . Form IRS 1023” indicates that the director wished to see the version of the Form 1023 that the petitioner had used to request tax-exempt designation, rather than a newly-executed Form 1023 that has never been reviewed or approved by the IRS, and which has been created solely for submission to CIS.

In response to the notice, Neil Patel states that the petitioner “bought the building on Colmere Drive, which currently serves as the Temple, in the summer of 1994. It took a couple of years before the building could be officially opened as a Temple. . . . It was during this time, 1996 and 1997, that [the petitioner] became in fact a religious temple and was transformed from merely a non-profit community organization.” The record shows that the petitioning organization did not come into existence when it “bought the building . . . in the summer of 1994.” Rather, the organization was in existence at least ten years earlier, as shown by the 1984 IRS determination letter. The petitioner’s own evidence proves that the petitioning organization was classified as a 501(c)(7) social club, rather than a 501(c)(3) temple, a decade before it “bought the building on Colmere Drive.” Thus, the fitness of the Colmere Drive building as of its 1994 purchase does not account for the petitioner’s 1984 designation under section 501(c)(7) of the Code.

Mr. [REDACTED] states:

[The petitioner] did not officially become a temple until 1996. At that time we planned to amend our IRS 501(c)(3) designation and sent information to our accountant for that purpose, but the task was forgotten until your notice brought the matter to our attention. We have now had our accountant prepare and submit to the IRS the attached request for a new 501(c)(3) letter as a non-profit religious organization, a church. . . . We understand that the actual IRS 501(c)(3) letter recognizing this status is not necessary for our treatment as a church for tax or immigration purposes, and that only evidence that is sufficient for such treatment to be given is required.

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 as

it relates to religious organizations, or one that has never sought such exemption but establishes to the satisfaction of CIS that it would be eligible therefor if it had applied for tax exempt status. The present matter is not a situation in which the petitioner has never sought IRS recognition as a tax-exempt organization. Rather, the petitioner has applied for and obtained such recognition, in a classification that does not permit it to make a qualifying offer of employment to the beneficiary for the purposes of the immigrant visa classification sought in this proceeding. As noted above, the petitioner's subsequent Form 990 returns through 2003 (the most recent in the record) consistently indicate that the petitioner is classified under section 501(c)(7) of the Code. We need not accept the petitioner's speculation that the IRS would designate the petitioner as a temple if asked to do so; the IRS has already decided the question of the petitioner's tax-exempt classification. The record contains nothing to show that the petitioner has contested this classification; instead, the petitioner has continued to file Form 990 returns that 501(c)(3) churches are not required to file.

As mentioned by Mr. Patel, the petitioner submits a copy of a newly-executed Form 1023 Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code. The copy has been transmitted by fax, but it contains additional comments added by hand in blue ink. There is no evidence that the petitioner filed this Form 1023 with the IRS as claimed. Assuming that it was submitted as claimed, there is no evidence to show that the handwritten comments were also present on the version submitted to the IRS.

The Form 1023 contains some omissions and discrepancies. For instance, under "Date Incorporated or Formed" on line 5, wrote only "1," and then crossed out that numeral, leaving the space effectively blank. Line 10 instructs the entity to specify whether it is a corporation (with articles of incorporation), a trust (with a trust indenture or agreement), or an association (with articles of association or a constitution). The petitioner indicated that it is an "association," and submitted a copy of its constitution. That constitution, however, states that the petitioner "is incorporated under the laws of the State of Tennessee. . . . The duration of the corporation is perpetual." The submission, therefore, contains conflicting claims as to whether or not the petitioner is a corporation. The constitution is dated October 2, 2003, and therefore it is obviously not the organizing instrument that established the petitioning entity prior to 1984, and it was also obviously not in effect as of the petition's 2001 filing date.

The petitioner had previously submitted a copy of its initial constitution, dated February 12, 1983. That document lists the following five "aims" of the association:

- (1) To develop and strengthen the feeling of unity, brotherhood and cooperation among the East Tennessee Gujarati residents.
- (2) To arrange cultural, social and recreational programs without being involved in political activities.
- (3) To make arrangements to give preliminary knowledge of the mother-tongue to the children who are not in contact with their mother-tongue.
- (4) To be helpful to an individual or family when victimized in accidental and unexpected calamity.
- (5) To protect the rights and self-respect of the Gujarati community with the strength of unity.

The new 2003 constitution contains a completely different list of objectives, the first of which is "To establish and maintain Sanatan Temple built and serviced in the traditional Hindu Religion philosophy"; another new objective is "To pursue the teachings of Hindu Religion Scriptures."

A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998), and *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), which require that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Here, the petitioner has created a new constitution in 2003 and executed a new Form 1023 in 2004 (which may or may not have been filed) in an attempt to establish, retroactively, that it was a qualifying 501(c)(3) tax-exempt temple as of 2001. The petitioner's revised structure may form a basis for a future filing, but cannot justify the approval of the 2001 petition. The claim that the petitioner meant to revise its structure several years ago cannot override this finding, even if such a claim were substantiated (which is not the case here). Whatever the outcome of the petitioner's new application for 501(c)(3) designation, it is a matter of incontrovertible and immutable fact that, as of the date of filing in 2001, the petitioner was a 501(c)(7) social organization, organized under a constitution that made no mention of a temple.

Counsel states, on appeal: "the Service flatly stated: 'The Petitioner is also required to submit IRS certification of 501(c)(3).' This is an incorrect statement as a matter of law. A petitioner is only required to show that it is a bona fide religious organization and would qualify for 501(c)(3) certification." Counsel then argues that the petitioner has submitted evidence that it would so qualify, pursuant to 8 C.F.R. § 204.5(m)(3)(i)(B).

We do not accept counsel's reasoning. 8 C.F.R. § 204.5(m)(3)(i)(B) applies in the absence of an IRS determination letter, not in spite of a facially disqualifying determination letter.⁵ If we were to accept the argument that an entity with an existing, but non-qualifying, IRS designation can simply declare itself to be tax-exempt as a "church," without having to obtain any revised ruling from the IRS, then we do not see what would stop an entity organized as a for-profit corporation from making the same claim. For instance, a corporation organized and registered as a restaurant could claim that it now operates as a non-profit, tax exempt "church," but has sought no such designation from the IRS because churches are not required to apply for designation. We therefore conclude that the provisions of 8 C.F.R. § 204.5(m)(3)(i)(B), which allow churches to submit evidence of eligibility for 501(c)(3) classification rather than an actual IRS determination letter, apply to entities that were initially organized as churches, rather than to entities initially organized for some other non-qualifying purpose and which later claim to have become churches.

We note that, while the IRS does not require churches to apply for designation, it strongly encourages them to do so, for the very reason that a designation letter would resolve any doubt or ambiguity about a given

⁵ The requirement that the petitioner either be tax exempt under section 501(c)(3) of the IRC, or not yet classified solely because it is a church, is not ambiguous and is commonly known by practitioners. *See, e.g., Robert Divine, Immigration Practice* at 17-157 (2004-2005 Ed. Juris Publishing, Inc.)(observing that "[a] U.S. religious organization of a denomination must present either proof of IRS certification of the exemption or proof that the organization has not applied for tax exemption, but would be eligible if it had applied").

church's tax status. For example, IRS Publication 557 states: "Although a church, its integrated auxiliaries, or a convention or association of churches is not required to file Form 1023 to be exempt from federal income tax or to receive tax deductible contributions, the organization may find it advantageous to obtain recognition of exemption."⁶ The same publication goes on to clarify that "the IRS does not accept any and every assertion that the organization is a church."

It is important to resolve this ambiguity in the interest of individuals who provide financial support to the organization. IRS Publication 557 indicates that donations to most 501(c)(3) organizations, including churches, "are deductible as charitable contributions on the donor's federal income tax return," but "[d]onations to exempt social and recreation clubs are not deductible as charitable contributions on the donor's federal income tax return." Thus, a donation to the petitioning entity as late as 2003, when the petitioner was still filing an annual Form 990 return as a 501(c)(7) social club, would not incur the same tax benefit for the donor as would a donation to a 501(c)(3) church. There is no indication that the IRS gives consideration for donations to social clubs that intend to seek a change of classification.

Because the burden of proof is on the petitioner, we are under no obligation to presume that the petitioner, already designated as a 501(c)(7) social club, also qualifies as a 501(c)(3) church. The petitioner's attempts to change its designation in 2003 and 2004 have no retroactive effect back to the filing date. We find that the petitioner is not, and as of 2001 was not, a qualifying 501(c)(3) religious organization.

Because the AAO engages in *de novo* review, the AAO may deny an application or petition that fails to comply with the technical requirements of the law, without remand, even if the district or service center director 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).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

⁶ See <http://www.irs.gov/publications/p557/ch03.html> and <http://www.irs.gov/publications/p557/ch04.html>, accessed October 12, 2005, from which derive all passages from IRS Publication 557 quoted in this decision.