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FILE: 
WAC 03 198 54641

Office: CALIFORNIA SERVICE CENTER Date: **SEP 30 2005**

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:


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.

Maui Johnson

Robert P. Wiemann, Director
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 on appeal. The appeal will be sustained.

The petitioner is a ministry "whose purpose is to provide food to the hungry and needy around the world." 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 missionary. The director determined that the petitioner had not established that it qualifies as a tax-exempt religious organization.

The petitioner, through counsel, submits a timely 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 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 [IRC] 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 to be determined is whether the petitioner is a qualifying tax-exempt organization. The regulation at 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit 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 section 501(c)(3) of the [IRC] 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 [IRC] as it relates to religious organizations.

According to the documentation from the IRS, the petitioner's tax-exempt status derives from classification not under section 170(b)(1)(A)(i) of the IRC, which pertains to churches, but rather under section 170(b)(1)(A)(vi) of the IRC. In his decision, the director noted that section 170(b)(1)(a)(vi) of the IRC refers "to charities that receive a substantial part of their support in the form of contributions from publicly supported organizations, from a government unit, or from the general public," and did not relate to religious organizations. Accordingly, the director determined that the petitioner could not be considered as a religious organization and denied the petition.

Upon review, we find the director failed to give full consideration to the petitioner's classification under section 170(b)(1)(A)(vi). Although the director correctly notes that the petitioner is an organization that qualifies for tax-exemption as a publicly supported organization under section 170(b)(1)(A)(vi), such a fact does not automatically render the petitioner ineligible for approval under 8 C.F.R. § 204.5(m)(3)(i).

The burden of proof is on the petitioner to establish its classification under section 170(b)(1)(A)(vi) of the IRC derives primarily from its religious character, rather than its status as a publicly supported charitable and/or educational institution. The necessary documentation to determine whether a petitioner's classification derives primarily from its religious character is described in a memorandum from William R. Yates, Associate Director of Operations, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003):

- (1) A properly completed IRS Form 1023;
- (2) A properly completed Schedule A supplement, if applicable;
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS¹ and that specifies the purposes of the organization;
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The above list is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B), cited above. The memorandum specifically states that the above materials are, collectively, the "minimum" documentation that can establish "the religious nature and purpose of the organization." Thus, for example, a petitioner cannot meet this burden by submitting only its articles of incorporation. That being said, it is important to note that item (2), Schedule A of Form 1023, is only required "if applicable." If the director cannot show that Schedule A is applicable in a given instance, then the petitioner's failure to submit Schedule A is not grounds for denial of the petition. Also, obviously, it is not enough merely for the petitioner to *submit* the documents listed above. The *content* of those documents must establish the religious purpose of the organization.

As it relates to the petitioner's tax-exempt status, the petitioner's initial submission contained:

- A copy of an April 21, 1992 letter from the IRS indicating the petitioner's exempt status under section 501(c)(3) as an organization described in section 509(a)(1) and 170(b)(1)(A)(vi) of the IRC.

¹ An organization may be granted an exemption if the purposes stated in the articles of organization are limited in some way by reference to 501(c)(3). The assets of an organization must be permanently dedicated to an exempt purpose. This means that should an organization dissolve, its assets must be distributed for an exempt purpose described in this chapter, or to the federal government or to a state or local government for a public purpose. See *IRS Publication 557*.

The director found this documentation insufficient to establish eligibility and on August 11, 2003, requested the petitioner to submit additional documentation related to its tax-exempt status. We note that in the request, the director listed the evidence described in the memorandum from Mr. [REDACTED]

In response, the petitioner submitted several documents, including:

- A copy of an April 14, 1988 letter from the IRS indicating that the petitioner is exempt from federal income tax under section 501(c)(3) and that it could “reasonably be expected to be [an] organization described in sections 509(a)(1) and 170(b)(1)(A)(vi).
- A second copy of the April 21, 1992 letter from the IRS.
- The petitioner’s Articles of Incorporation.
- The petitioner’s Form 1023, dated November 14, 1984.

In his decision, the director failed to discuss any of the above-submitted documentation and to ascertain whether the petitioner’s federal tax exemption derives from its religious character. The director simply denied the petition because the IRS did not classify the petitioner as a church under section 170(b)(1)(A)(i) of the IRC. This finding, the sole stated ground for denial, relies on an impermissibly narrow construction of the regulations.

On question number 8 of the Form 1023 the petitioner was asked to list “[w]hat benefits, services, or products will the organization provide that are related to its exempt function.” The petitioner’s response indicated that the petitioner would “[a]ssist in spreading the gospel of Jesus Christ by meeting the needs of starving and poor people throughout the world by providing dehydrated and dried fruit and vegetables.”

The petitioner’s Articles of Incorporation indicate that the petitioner is a “religious corporation” whose “specific purpose . . . is to promote the Gospel of Jesus Christ and advance the Christian faith throughout the world.” The Articles of Incorporation also contain a dissolution clause which indicates that the petitioner’s property is “irrevocably dedicated to religious purposes,” and that upon dissolution, the petitioner’s assets would be “distributed to a nonprofit fund, foundation or corporation which is organized and operated exclusively for religious purposes and which has established its tax exempt status under section 501(c)(3) of the [IRC]”. We find the petitioner’s Articles of Incorporation sufficiently demonstrate the petitioner’s religious purpose and that the dissolution of the petitioner’s assets are limited by reference to 501(c)(3) as they are permanently dedicated to an exempt purpose.

In addition, the record contains numerous brochures and other literature documenting the petitioner’s work as a “Christian organization” which provides food products to “orphans, widows, children, and disaster victims” in many different countries. The literature indicates that the petitioner partners with other Christian mission agencies to “share the love of Christ in word and deed.”

Based upon the above discussion, we find the petitioner’s classification under section 170(b)(1)(A)(vi) of the IRC derives primarily from its religious character, rather than its status as a publicly supported charitable and/or educational institution. Accordingly, the petitioner has properly established that it is exempt from taxation in accordance with section 501(c)(3) of the IRC as it relates to religious organizations.

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 sustained that burden.

ORDER: The appeal is sustained and the petition is approved.