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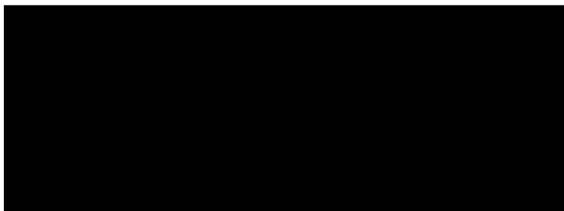
U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE: LIN 03 277 52218 Office: NEBRASKA SERVICE CENTER Date: DEC 26 2006

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a Mennonite missionary organization. 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 the Director of Strategic Literature Development at [REDACTED]. The director determined that the beneficiary's intending employer is not a qualifying tax-exempt non-profit organization.

On appeal, counsel argues that the petition should be approved because the petitioner is a religious organization that wholly owns [REDACTED].

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).

8 C.F.R. § 204.5(m)(1) states that a special immigrant religious worker 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 alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation, or working in a religious vocation or occupation for the organization or 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 (the Code)

at the request of the organization. All three types of 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.

Pursuant to the above regulation, the petitioner must show that the beneficiary's immediate past work, and his intended future work, must be for an organization that "is exempt from taxation" as a 501(c)(3) non-profit organization. This requirement derives directly from section 101(a)(27)(C) of the Act and its subsections.

8 C.F.R. § 204.5(m)(2) offers the following relevant definitions:

Bona fide nonprofit religious organization in the United States means 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 the Service that it would be eligible therefor if it had applied for tax exempt status.

Bona fide organization which is affiliated with the religious denomination means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

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.

The petitioner submits a copy of a determination letter from the Internal Revenue Service (IRS), dated May 11, 1979, indicating that the petitioning entity is "an organization of the type described in section 509(a)(1) . . . and 170(b)(1)(A)(vi)" of the Code. This letter confirmed a preliminary IRS finding, dated March 8, 1977.

In an introductory letter submitted with the initial filing of the petition, [REDACTED] President of the [REDACTED]

[The petitioner] is a Not-for-Profit Religious Organization under Section 501(c)(3), 509(a)(1) under the Internal Revenue Code and is considered a Religious Organization by the State of

Indiana. This organization was mistakenly [classified under section] 170(b)(1)(A)(vi) [of the Code]. This organization should be [classified under section] 170(b)(1)(A)(ii).

We note that section 170(b)(1)(A)(vi) of the Code pertains to a variety of non-profit organizations, which may or may not be religious in nature. Section 170(b)(1)(A)(ii) of the Code relates to schools. We further note that the petitioner cannot simply declare that the IRS erred in assigning a classification to the petitioning organization. The record contains no evidence that the petitioner formally sought to persuade the IRS to change the classification. The classification in the 1977 preliminary IRS letter matches the one in the 1979 final IRS determination, and the 1979 letter does not mention any prior protest or attempt by the petitioner to change that classification. Absent compelling evidence to the contrary, we must defer to the IRS' determination.

Mr. [REDACTED] continues:

[The petitioner] is really part of the Mennonite Church. They serve as the missionaries of the Mennonite Church. . . .

We desire to have [the beneficiary] assume the duties of a Director of Strategic Literature Development. He has held this position for our organization over the last two years.

On January 13, 2005, the director issued a request for evidence (RFE), instructing the petitioner to submit, among other things, documentation of the petitioner's finances and the beneficiary's past employment. In response, the petitioner has submitted copies of the beneficiary's Form W-2 Wage and Tax Statements from 2001 through 2004. These documents do not indicate that the beneficiary worked for the petitioning organization. Rather, the Forms W-2 identify the beneficiary's employer as [REDACTED]. That company's Employer Identification Number (EIN) differs from the EIN shown on the petitioner's own documents, demonstrating that the petitioner and GET Printing, Inc. are two distinct corporate entities.

The petitioner has also submitted a copy of its Form 990 Return of Organization Exempt From Income Tax. Under Part IX, Information Regarding Taxable Subsidiaries and Disregarded Entities, the petitioner listed GET Printing, Inc. The petitioner indicated it holds a 100% ownership interest in [REDACTED].

On May 12, 2005, the director issued a second RFE, which reads, in part:

It appears that the beneficiary has been employed by [REDACTED] incorporated from 2001 through 2004. As the employer identification number differs from the petitioning entity, please provide information that [REDACTED] is recognized as a nonprofit organization relating to a religious organization.

In response, the petitioner submits documentation showing that the beneficiary has worked in the United States as an R-1 nonimmigrant religious worker. This status proves nothing conclusive, as the nonimmigrant status may have been granted in error. If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would

constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

We note that the R-1 documentation in the record identifies the petitioning employer as [REDACTED] (*sic*), not [REDACTED]. The record offers no indication that the director was aware of this distinction while adjudicating the nonimmigrant petition.

Mr. [REDACTED] asserts that [REDACTED] is "an in-house printing department," incorporated so as "to maintain a separate budget and to track its activities." The petitioner submits ample documentation establishing the petitioner's ownership of [REDACTED]. The issue here, however, is not whether the petitioner owns [REDACTED] but whether [REDACTED] is a qualifying 501(c)(3) non-profit organization.

The petitioner submits a copy of the petitioner's IRS Form 1023 Application for Recognition of Exemption. The petitioner does not submit any comparable Form 1023 for [REDACTED].

The petitioner submits copies of the Certificates and Articles of Incorporation for the petitioning entity and for [REDACTED]. The petitioner's Certificate of Incorporation identifies the petitioner as a "not-for-profit corporation," incorporated "as prescribed by the Indiana Not-For-Profit Corporation Act of 1971." The petitioner's Articles of Incorporation conform to the specifications of a non-profit corporation. For instance, the petitioner's Articles contain a clause specifying that, upon dissolution of the corporation, its net assets must go to another non-profit organization.

The Certificate issued to [REDACTED] "as prescribed by the provisions of the Indiana Business Corporation Law," does not refer to the entity as a non-profit or not-for-profit corporation. [REDACTED] Articles do not contain a qualifying dissolution clause, or otherwise identify [REDACTED], as a non-profit or not-for-profit corporation. Rather, a stated purpose of the corporation is "[t]o transact any and all lawful business for which corporations may be incorporated under the Act," "the Act" being "the Indiana Business Corporation Law."

The director denied the petition on September 29, 2005, stating that [REDACTED], Inc. is not a qualifying 501(c)(3) tax-exempt non-profit religious organization. The director stated: "[REDACTED] may have been formed by [the petitioner, but] it appears to be a separate entity with its own employer identification number. . . . Based upon the information found in [REDACTED] articles of Incorporation . . . this corporation has not been organized for religious purposes." The director also found that the petitioning entity does not qualify as a religious organization because it is classified under section 170(b)(1)(A)(vi) of the Code, rather than as a church under section 170(b)(1)(A)(i) of the Code.

The finding that an organization must be classified as a church under section 170(b)(1)(A)(i) of the Code is overly restrictive; tax law recognizes a distinction between “churches” and “religious organizations.” See 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). We hereby withdraw the director’s finding that the petitioning entity is not a religious organization. Our finding in this regard, however, does not nullify the remaining basis for the denial of the petition, because the beneficiary’s employer is not the petitioning entity.

Counsel, on appeal, argues that [REDACTED], has a “qualifying relationship to” the petitioning entity, because the two entities “are closely related companies . . . created by the same people.” These facts, however, are not sufficient to establish that [REDACTED] is a qualifying entity. The statute (cited above) requires the beneficiary to work for “a bona fide nonprofit, religious 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.” [REDACTED], is undoubtedly “affiliated with the religious denomination,” but it is most assuredly not “exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986.”

Counsel acknowledges that [REDACTED] “is a for profit entity,” but counsel states: “The reason that [REDACTED] was not incorporated as a non-profit, was that they were expecting to do some printing for other religious organizations. Under advisement of their accountant, they did not include the printing activities under [the petitioning entity], but were advised to open a separate entity.”

The petitioner’s motivations in setting up [REDACTED], as a separate corporation are immaterial for the purposes of this proceeding. The statute and its implementing regulations plainly require that the beneficiary must seek to work (and must have worked) for a 501(c)(3) non-profit organization. The documents in the record clearly establish that [REDACTED], has been incorporated as a for-profit business entity, and not as a 501(c)(3) non-profit organization. It is this for-profit business that has employed the beneficiary since 2001, and the petitioner has indicated that the beneficiary will continue to hold the same position as he now holds. This employment by a for-profit business is inherently non-qualifying under both the statute and the regulations; it is irrelevant that a non-profit religious organization owns [REDACTED]. Because the intending employer is organized as a for-profit business, there is no way that the director could lawfully have approved the petition. The director had no choice but to deny the petition, and we hereby affirm that decision.

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 not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.