

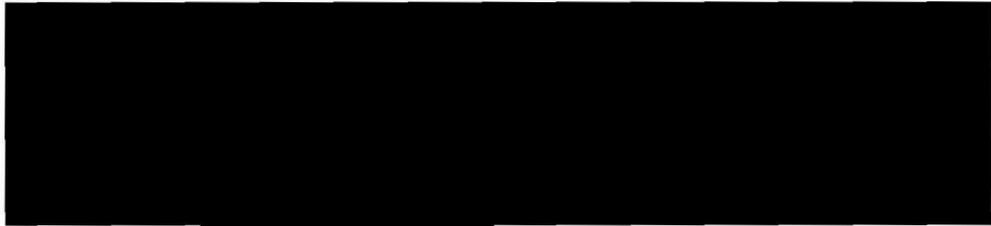
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUL 19 2006

WAC 04 228 53987

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.

Robert P. Wiemann, Chief
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 dismissed.

The petitioner, identified as a church, 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 an associate pastor. The director determined that the petitioner had not established that it is a qualifying tax-exempt religious organization, or that the beneficiary had the requisite two years of continuous work experience as an associate pastor immediately preceding the filing date of the petition.

On appeal, the petitioner submits arguments from counsel and background documents from the Internal Revenue Service (IRS).

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).

The first issue under consideration concerns the petitioner's tax status. 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.

Rev. [REDACTED], pastor of the petitioning church, states that the petitioning church “is a member church of the Korean American Presbyterian Church which is a recognized nonprofit 501(c)(3) exemption [sic] organization.”

Counsel states that the petitioner’s initial submission includes a “501(c)(3) nonprofit IRS tax exemption letter.” The record contains no determination letter from the IRS. The record does contain a July 14, 1993 letter from the IRS, which reads, in part:

This letter is in response to your request for a copy of the determination letter for the above named church. . . .

A church is not required to file a formal application for exemption with the Internal Revenue Service.

In order to have a determination letter issued in its own name, the church must apply thru [sic] the Internal Revenue Service and follow the normal application procedures, including payment of a user fee.

This letter is not a formal determination letter or ruling.

The letter does not establish that the petitioner is a tax-exempt church; it offers only the general assertion that, for tax purposes, churches are not required to apply for exemption. The petitioner has not submitted any documentation to show that the petitioning church is covered under any group exemption that may have been issued to the Korean American Presbyterian Church.

The petitioner submits a copy of a Statement by Domestic Nonprofit Corporation, completed on California Department of State Form SO-100. This state form does not establish federal tax-exempt status. The petitioner also submits a copy of IRS Form 990, Return of Organization Exempt From Income Tax, for 2001. While most of the form has been completed, some parts remain blank, including “Organization type,” “primary exempt purpose,” and the signature block.

On April 19, 2005, the director issued a request for evidence (RFE), instructing the petitioner to submit “the 2003 and 2004 Internal Revenue Service (IRS) Return of Organization Tax Exempt, to include – IRS 501(c)(3) Tax Exempt Certification.” In response, Rev. [REDACTED] states: “Beginning in 2002, we stopped filing Form 990 after being advised by our accountant that we were not required to file.” Rev. [REDACTED] offers no further evidence of tax-exempt status; he simply asserts that the church was “established in 1985 and became a nonprofit organization under Section 501(c)(3).”

The director denied the petition in part because the petitioner did not submit evidence to establish qualifying tax-exempt status or to show that the petitioner “is eligible for that exemption.” On appeal, counsel states that, pursuant to IRS policy, “churches are automatically exempt from tax under Section 501(c)(3) whether or not they have filed Form 1023,” that form being the application for exemption. Therefore, counsel argues, “all that needs to be shown . . . is that the petitioner is a church.” Counsel contends that the petitioner has established this because “[t]he word ‘church’ appears in the petitioner’s name. The articles of incorporation at article 2B clearly state a specific purpose of operation [as] a church. . . . It is beyond doubt that the petitioner is a church.”

While it is true that the IRS does not require churches to apply for exemption, it does not follow that the petitioner can meet its burden of proof for immigration purposes simply by declaring itself to be a church and, therefore, presumptively tax-exempt. The director, in the decision, quoted 8 C.F.R. § 204.5(m)(3)(i) and its subsections, which already account for the automatic exemption by allowing the petitioner to submit, in lieu of an IRS determination, the documentation that the IRS would require in order to make such a determination.

The petitioner has nothing from the IRS that directly verifies the petitioner’s tax-exempt status, and so the petitioner cannot satisfy 8 C.F.R. § 204.5(m)(3)(i)(A). Thus, the petitioner must instead satisfy 8 C.F.R. § 204.5(m)(i)(B) by submitting the documentation that the IRS would have required, had the petitioner chosen to apply for recognition of tax-exempt status. The necessary documentation 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 IRS 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). 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 brochures and its articles of incorporation. Counsel acknowledges that the petitioner “has never filed a Form 1023 Application for Recognition of Exemption,” but counsel fails to recognize that a completed Form 1023 is a document required by the IRS to establish eligibility for exemption.

The issue here is not whether the petitioner calls itself a church, which it obviously does, but rather, whether the petitioner has met the evidentiary requirements of either 8 C.F.R. § 204.5(m)(3)(i)(A) or (B), which it has not. We reject the argument that the petitioner does not have to meet these requirements because it is a church; on the contrary, the petitioner must meet these requirements to show that it is, in fact, a church for tax

and immigration purposes. Therefore, the petitioner has not met its burden of proof in this regard, and the director properly cited this deficiency as a basis for denial of the petition.

The remaining issue concerns the beneficiary's past work. 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 August 18, 2004. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an associate pastor throughout the two years immediately prior to that date.

In the letter accompanying the initial filing, Rev. [REDACTED] states:

From December 2002 to June 2004, [the beneficiary] attended the Fuller Theological Seminary in Pasadena, California pursuing [a] doctorate degree in Special Ministry.

[The beneficiary] has been serving as a Missionary in Kenya . . . since 1985. From 1991 to July 2002, [the beneficiary] continued his second term of ministry in Kenya. . . . During his sabbatical leave from July 2002, [the beneficiary] came to the U.S. to attend Fuller Seminary. During his stay in the United States, [the beneficiary] was supported by the Global Mission Society of the Presbyterian Church in Korea. In June 2004, [the beneficiary] returned to Narok, Kenya to continue his ministry.

The beneficiary's transcript from Fuller Theological Seminary, issued June 29, 2004, indicates that the beneficiary was "Admitted: Doctor of Ministry Special - Spring 2003." The transcript shows that the beneficiary earned 12 credit hours during the "Spring 2003" session, and 16 credit hours during the "Summer 2003" session. The transcript indicates that the beneficiary earned a total of 28 credits at the seminary, consistent with the credits earned during the two 2003 sessions. The transcript mentions no subsequent study.

In the April 19, 2005 RFE, the director instructed the petitioner to submit "evidence of the beneficiary's work history beginning August 19, 2003 [*sic*] and ending August 18, 2004 only." In response, Rev. [REDACTED] states: "From December 2002 to June 2004, [the beneficiary] was pursuing advanced graduate study at Fuller Theological Seminary in Pasadena, California. During that time he was an active member of this church and frequently delivered sermons and gave talks about his missionary experience in Africa. Since June 2004, he has returned to his missionary duties in Africa."

The petitioner also submits a letter from [REDACTED] Kenya Branch executive officer for Africa Inland Mission International. The letter, dated February 27, 2003, reads in part:

[The beneficiary and his spouse] have been full members in good standing with Africa Inland Mission since January, 1985 living in Kenya up to the present time. They have been and will

continue to serve and work in Kenya with the Africa Inland Church, under Africa Inland Mission.

The petitioner submits a copy of the beneficiary's résumé, including the following information:

- Aug. 96-Jul. 02 Served as Principal at [REDACTED] and [REDACTED] Mombasa, Kenya
- Jul. 02-Dec. 02 [REDACTED] in Korea
- Dec. 02-Jun. 04 [REDACTED] in Pasadena, California
Doctor of Ministry
- Jun. 04-Present Third term as Missionary/Pastor
Narok, Kenya

The evidence is not in full agreement with the petitioner's and the beneficiary's claims. Both the petitioner and the beneficiary assert that the beneficiary attended [REDACTED] Seminary from December 2002 to June 2004, but the June 2004 transcript from [REDACTED] only shows coursework in "Spring 2003" and "Summer 2003." In a letter dated February 2003, [REDACTED] stated that the beneficiary has been "living in Kenya up to the present time," with no mention or indication that the beneficiary had actually been away from Kenya for the past eight months.

In denying the petition, the director found that [REDACTED]'s letter lacks important details and corroboration, and also contradicts other claims in the record. The director found that these discrepancies have compromised the petitioner's credibility. The director concluded: "The record fails to establish that the beneficiary was employed as an associate minister in a Presbyterian Church for the two years immediately preceding the filing of the petition."

On appeal, counsel states that the beneficiary need not have undertaken exactly the same religious duties throughout the two-year qualifying period. To support this assertion, counsel cites an unpublished appellate decision from 1994. This unpublished decision has no force as precedent and therefore it is not binding in this proceeding. More importantly, this response fails utterly to address contradictory claims and evidence in the record. The transcript from Fuller Theological Seminary indicates only that the beneficiary studied there for part of 2003, and thus it does not support the petitioner's repeated claim that the beneficiary studied there from December 2002 to June 2004. The only evidence offered regarding the beneficiary's claimed work in Kenya is a letter dated February 2003, indicating that the beneficiary was in Kenya at that time. This contradicts the claim that the beneficiary left Kenya in July 2002 and did not return there until almost two years later.

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. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or

reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 586, 592 (BIA 1988). The director cited *Ho* in the denial notice, but the petitioner, on appeal, has not even acknowledged the discrepancies, let alone offered independent objective evidence to rebut the director's findings.

Apart from the inconsistent claims regarding the beneficiary's whereabouts in late 2002 and early 2004, the record contains nothing to show that beneficiary performed qualifying activities during the second half of 2002. The petitioner has offered only the vague assertion that the beneficiary was on sabbatical during that time. This very general claim cannot suffice to establish that the beneficiary engaged in qualifying religious work during that time, even without the further credibility issues that arise pursuant to *Ho*. The petitioner has, therefore, failed to overcome this stated ground for denial.

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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.