



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date: MAY 24 2006

EAC 04 075 50630

IN RE:

Petitioner:

[Redacted]

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:

[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.

Maui Johnson

S Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a Baptist church. 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 pastor. The director determined that the petitioner had not established that it qualifies as a tax-exempt religious organization, or that the position offered to the beneficiary qualifies as a religious occupation.

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 stated ground for denial concerns the petitioner's tax status. The director found that the petitioner had not provided sufficient evidence of this status, but the director did not clearly indicate what was required. 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 necessary documentation to which 8 C.F.R. § 204.5(m)(3)(i)(B) refers 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 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.

Officials of the [REDACTED] of Massachusetts assert that the petitioning church is a member of the [REDACTED] of Massachusetts, which, in turn, is a constituent of [REDACTED]. The petitioner must either provide documentation of its own federal tax-exempt status, or else demonstrate that the [REDACTED] of Massachusetts or [REDACTED] holds a group exemption that covers the petitioning church. The director must allow the petitioner an opportunity to submit this evidence.

We note that the petitioner has repeatedly submitted evidence that the [REDACTED] of Massachusetts is exempt from Massachusetts sales tax. This evidence cannot suffice, because is not proof of exemption from federal income tax. Rather than explain this deficiency, however, the director simply stated that the petitioner had not established the required tax-exempt status.

The other stated ground for denial is more seriously flawed and must be set aside entirely. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical

workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The director stated that the petitioner has not shown that the beneficiary's duties relate to traditional religious functions, or that the position requires specialized religious training. Therefore, the director concluded, the petitioner has not shown that the position qualifies as a religious occupation. The position, however, appears to fall under the definition of "minister" rather than "religious occupation." The petitioner has repeatedly referred to the beneficiary as a "pastor" who was ordained in 1979. Letters submitted on appeal indicate that the beneficiary's duties include "the performance of baptisms, communion, weddings and funerals."

The director must re-evaluate the evidence presented, and determine whether the beneficiary qualifies for classification not as a worker in a religious occupation, but as a minister. If the director finds the petitioner's evidence deficient in this regard, the director must specifically identify any evidentiary deficiencies and afford the petitioner the opportunity to overcome those deficiencies.

Beyond the above issues, one other area in the record seems to require further attention. 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 reference to a "petition filed by . . . an employment-based immigrant which requires an offer of employment" shows that this regulation applies to special immigrant religious workers, because there is no other employment-based immigrant classification that permits an alien to self-petition. The petitioner indicates that it will pay the beneficiary \$25,000 per year "plus a housing allowance to cover his rent expense and health insurance." The petitioner has submitted materials from a credit union, showing an account balance between \$30,000 and \$36,000 at any given time, but nothing to show a full picture of the petitioner's income and expenses or to indicate that the petitioner has, thus far, paid the proffered amount to the beneficiary. The director should address this issue and allow the petitioner a final opportunity to submit evidence that conforms to 8 C.F.R. § 204.5(g)(2).

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.