

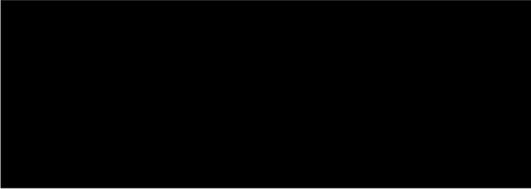
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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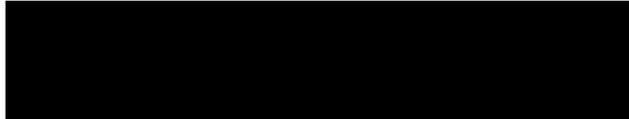
C1

FILE: [REDACTED]
EAC 04 122 50312

Office: VERMONT SERVICE CENTER

Date: JUL 20 2007

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:

SELF-REPRESENTED

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, Vermont 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 seeks classification 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 minister at Virginia Beach Christian Life Center (VBCLC), Virginia Beach, Virginia. The director determined that the petitioner had not established that VBCLC is a qualifying tax-exempt religious organization.

On appeal, the petitioner submits a letter from a VBCLC official and various documents.

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)(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.

Accompanying the petitioner's original filing was a letter from [REDACTED] VBCLC's Business Manager, who stated: "Virginia Beach Christian Life Center is a recognized non-denominational, non profit tax-exempt organization listed with the Internal Revenue Service under Federal Tax Identification Number: [REDACTED]"

On April 1, 2005 the director issued a request for evidence, in which the director quoted the regulation at 8 C.F.R. § 204.5(m)(3)(i). That regulation calls for "[s]uch documentation as is required by the Internal Revenue Service to establish eligibility," but does not identify the specific documentation that the Internal Revenue Service requires.

In response to the director's notice, the petitioner submitted a second letter from [REDACTED] repeating the assertion that VBCLC is a 501(c)(3) tax-exempt non-profit church.

The director denied the petition on December 8, 2005, because the petitioner "did not submit the requested supporting documentation to establish that [VBCLC] is exempt from taxation."

On appeal, [REDACTED] VBCLC's Business Manager (apparently [REDACTED]'s successor), states:

According to the Internal Revenue Service (IRS) regulations a church is automatically exempt from taxation in accordance with Section 501(c)(3) of the IRS Code of 1986. Churches by default are tax-exempt and do not need to file a Form 1023 for official recognition of their exemption. Therefore, no official documentation or recognition is required by the IRS for churches to be considered a tax-exempt organization.

[REDACTED] is correct in asserting that churches are presumptively tax-exempt without filing Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code. This does not mean, however, that 8 C.F.R. § 204.5(m)(3)(i) does not apply to churches. Indeed, the structure of the regulation acknowledges this fact. 8 C.F.R. § 204.5(m)(3)(i)(A) calls for evidence from the IRS itself; in the alternative, 8 C.F.R. § 204.5(m)(3)(i)(B) calls for the documentation that the IRS would have required, had the entity chosen to seek official recognition from the IRS. The petitioner cannot satisfy the evidentiary requirements of 8 C.F.R. § 204.5(m)(3)(i)(B) simply by stating that churches need not apply for recognition. Otherwise, an entity that is not a church at all could fraudulently seek immigration benefits for an alien simply by claiming to be a tax-exempt church and asserting that no documentation to that effect is required. 8 C.F.R. § 204.5(m)(3)(i)(B), therefore, provides a means to distinguish between an organization that has no IRS letter because it is a church, and an organization that has no IRS letter because it does not qualify for exemption at all. Failure to submit an IRS determination letter is not presumptive evidence that a given organization is a church.

The petitioner submits excerpts from IRS Publications 1828, *Tax Guide for Churches and Religious Organizations*, and 557, *Tax Exempt Status of Your Organization*. The petitioner highlighted the following

passage from IRS Publication 1828: “Churches that meet the requirements of IRC section 501(c)(3) are automatically considered tax exempt and are not required to apply for and obtain recognition of tax exempt status from the IRS.” The very next sentence, we note, reads: “Although there is no requirement to do so, many churches seek recognition of tax-exempt status from the IRS because such recognition assures church leaders, members, and contributors that the church is recognized as exempt and qualifies for related tax benefits.”

Given the above, it is clear that a procedure exists by which the IRS can formally recognize the tax-exempt status of a given church. Page 4 of IRS Publication 1828 discusses this procedure: “Organizations, including churches and religious organizations, that wish to be recognized as tax exempt under IRC section 501(c)(3) must use Form 1023.” Therefore, the same IRS publication that the petitioner cites in support of the appeal clearly states that Form 1023 is among the documentation required by the IRS to establish eligibility for exemption.

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), affirms that the documentation required under 8 C.F.R. § 204.5(m)(3)(i)(B) includes “[a] properly completed IRS Form 1023” and “[a] properly completed Schedule A supplement.”

We stress that the AAO is not making a finding that VBCLC is not a church, or that VBCLC does not qualify for tax-exempt status. Rather, the AAO finds that the petitioner has not provided the required documentary evidence regarding VBCLC’s claimed tax-exempt status.

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.