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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: MAR 13 2007
EAC 04 158 52511

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:
[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.

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 is an Episcopal 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 verger. The director determined that the petitioner had not established: (1) its status as a qualifying tax-exempt religious organization; (2) that the beneficiary had the requisite two years of continuous work experience as a verger immediately preceding the filing date of the petition; (3) the existence of a qualifying job offer; or (4) that the position offered to the beneficiary qualifies as a religious occupation.

On appeal, the petitioner submits witness letters and arguments from counsel.

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).

First, we will consider the issue of 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] rector of the petitioning church, stated at the time of filing that the church "is a member of the Episcopal Diocese of Pennsylvania, the Episcopal Church of the United States of America and the world-wide Anglican Communion." The petitioner's initial filing included a copy of the petitioner's Commonwealth of Pennsylvania Sales and Use Tax Certificate of Exemption. This certificate covers state sales and use tax, not federal income tax, and it is not presumptive evidence of federal income tax exemption. The initial filing did not include any documentation from the Internal Revenue Service (IRS) showing a direct exemption for the petitioning entity, or the petitioner's membership in a larger organization covered by a group exemption under section 501(c)(3) of the Internal Revenue Code of 1986 (the Code).

On March 30, 2005, the director issued a request for evidence (RFE), instructing the petitioner to submit either documentation from the IRS, establishing the petitioner's tax-exempt status, or documentation that the IRS would require to establish eligibility for such exemption. The director specifically stated that this evidence must establish federal income tax exemption under section 501(c)(3) of the Code. In response, the petitioner has submitted additional documentation relating to its exemption from Pennsylvania sales and use tax.

Rev. [REDACTED] stated in a new letter that the petitioning church is "listed with the Episcopal Church federal group tax exemption." The petitioner's RFE response includes nothing from the IRS or from any higher body of the Episcopal Church to confirm this assertion.

The director denied the petition on January 3, 2006, in part because the petitioner "did not submit the requested documentation from the Internal Revenue Service indicating that [the petitioning organization] is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986."

On appeal, Rev. [REDACTED] states that the petitioning church "does have the status of a non-profit organization evidenced by our federal I.D. number: 23-1352453, and the enclosed copy of form 941." The assignment of a federal employer identification number is not evidence of non-profit or tax-exempt status, as issuance of such numbers is not restricted to tax-exempt non-profit organizations. The materials accompanying the appeal in the record do not include any Form 941. Furthermore, IRS Form 941 is quarterly tax return, used by employers regardless of tax-exempt status.

Therefore, we are left with no documentary evidence, and only Rev. Brinkman's assertions. The petitioner's unsupported claims are not evidence and cannot meet the petitioner's burden of proof. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998).

The petitioner has not submitted any documentation from the IRS to satisfy 8 C.F.R. § 204.5(m)(3)(i)(A), and the petitioner has not submitted alternative documentation sufficient to satisfy 8 C.F.R. § 204.5(m)(3)(i)(B). 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.

We acknowledge that the director did not specify the exact documentary requirements listed above, but the director did apprise the petitioner of the regulatory requirements, and specify that "documentation" was necessary. The petitioner has claimed to be covered by a group tax exemption. These group exemptions are documented and recognized by the IRS, yet the petitioner has produced no documentary evidence to support its claims in these areas. Counsel, in the appellate brief, offers no explanation for the petitioner's failure to provide the required evidence. Counsel touches on the issue only to observe that the petitioner has listed its employer identification number. Counsel does not explain why that piece of information should suffice as proof of tax-exempt status as a religious organization.

We affirm the director's finding that the petitioner has not submitted documentation to establish its tax-exempt status. We stress, here, that this is not an affirmative finding that the petitioner is not tax-exempt. It is, rather, a factual finding that the petitioner, on whom the burden of proof rests, has not submitted the required documentary evidence. There is no initial presumption that the petitioner is a qualifying tax-exempt religious organization, and the government is not required to adduce evidence to rebut any such presumption.

Next, we address the beneficiary's past experience. 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 April 30, 2004. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a verger throughout the two years immediately prior to that date.

The beneficiary did not arrive in the United States until August 31, 2002, four months into the two-year qualifying period. Therefore, the beneficiary's experience in the United States cannot suffice to meet the two-year experience requirement.

Rev. [REDACTED], in his introductory letter, did not indicate that the beneficiary had ever worked as a verger for the petitioning church. Rather, Rev. [REDACTED] stated that the church "has offered [the beneficiary] the position of 'verger.' . . . We are desirous of his skills and abilities." The letter contains no specific details about the beneficiary's past work.

Witnesses in Nigeria have attested to the beneficiary's work as the vergers at St. Michael's Anglican Church in Lagos. None of these letters, however, refer to any work the beneficiary had performed after April 30, 2002. Not all of the witnesses specified the year in which the beneficiary stopped working, but all of those who did (including the beneficiary's spouse) indicated that the beneficiary left his position at St. [REDACTED] in 2001. [REDACTED], an official of St. [REDACTED], stated that the beneficiary "will soon have a post" in the United States. Mr. [REDACTED]'s wording suggests that the beneficiary did not have such a post as of the date of the letter (March 1, 2004). None of these initial witnesses stated that the beneficiary ever received payment for his services as a vergers.

In the RFE issued on March 30, 2005, the director instructed the petitioner to submit detailed information about the beneficiary's work as a vergers during the two-year qualifying period. The director also specifically requested "evidence that explains how the beneficiary supported herself/himself." In response, Rev. [REDACTED] stated that the beneficiary's "employment will begin immediately after he is granted status as a religious worker." Rev. [REDACTED] discussed the beneficiary's earlier work in Nigeria, but did not claim that the beneficiary had performed any of the duties of a vergers in the United States.

The petitioner submits a letter dated December 29, 2004, addressed to the beneficiary from the Rt. Rev. [REDACTED], Assisting Bishop of the Episcopal Diocese of Pennsylvania. The letter reads, in part:

You were so good to serve with me when I visited [the petitioning church]. You were there right at my elbow at all times, and ready to do my bidding, as that bidding appertained to my work that morning at the Altar. Thank you for helping me prepare, and subsequently helping me vest. You were a very kind and effective Chaplain. . . . May the Lord bless you and keep you, may His Spirit guide you in your work at [the church] and in the work you do for a living, and also in all the other areas of your life.

It is not clear when the beneficiary assisted Rev. [REDACTED], but given that the letter was dated late December 2004, there is no reason to assume that this activity took place prior to April 30, 2004. Rev. [REDACTED]'s wording indicates that the beneficiary's work at the church is separate and distinct from the work the beneficiary does "for a living." The petitioner's submission included nothing to show how the beneficiary supported himself during the qualifying period, even though the director had requested such evidence. Letters from church officials in Nigeria attest to the beneficiary's past work as a vergers, but the letters do not indicate that the beneficiary was ever paid for that work.

The director, in denying the petition, stated that the petitioner's submissions "do not indicate that the beneficiary has been employed full-time for the period immediately prior to the filing of this petition. There is also no documentation to indicate how the beneficiary has supported himself during that time frame."

On appeal, the petitioner submits new letters and a statement from the beneficiary. Counsel asserts that these materials constitute "substantial evidence that the beneficiary has at least two (2) years of continuous full time experience." The record is, in fact, devoid of documentary (non-testimonial) evidence that the beneficiary has ever worked anywhere as a vergers. Furthermore, we reiterate, here, the statutory and regulatory requirement that the two years of continuous full-time experience must coincide with the period immediately prior to the

filing of the petition. Therefore, it cannot suffice to show that the beneficiary, at some point in his past, worked for two years as a verger.

The beneficiary states:

I worked as a verger for ten years at St. Michael's Anglican Church, [REDACTED] from 1992 to 2001. I was on an annual wage of eight hundred thousand Naira (#800,000). . . .

Since my arrival in the United States in 2002, I have been able to maintain my daily upkeep through support from my church and from doing odd jobs such as helping people move furniture, cleaning out trash, cleaning people's lawns and shoveling out snow without charging and people in turn show some appreciation. This has been keeping me going pending the time I will be granted status as a religious worker when I will be fully employed by [the petitioning church] on an annual stipend of \$10,000 plus housing.

The beneficiary's reference to "odd jobs," though uncorroborated, is the first indication of how the beneficiary has supported himself in the United States. It is consistent with repeated statements from Rev. [REDACTED] that the beneficiary's work as a verger had not yet begun. Rev. [REDACTED] offers another such statement on appeal, stating that the beneficiary's "employment will begin immediately after he is granted status as a religious worker."¹

Other witness letters submitted on appeal echo the beneficiary's assertion that the beneficiary's work in Nigeria ended in 2001, well before the two-year qualifying period began at the end of April 2002. The beneficiary did not arrive in the United States until August 31, 2002. Thus, even if the beneficiary had begun working for the petitioner immediately upon his arrival in the United States (which has not been shown to be the case), there is a four-month gap at the beginning of the qualifying period.

The petitioner has documented that the beneficiary worked continuously as a verger anywhere during the 2002-2004 qualifying period. Evidentiary deficiencies aside, the petitioner's claim on its face is not qualifying, because the petitioner has not identified any church where the beneficiary worked as a verger between May and August 2002, and the petitioner has been extremely vague regarding the beneficiary's activities after his August 30, 2002 arrival in the United States. Thus, the petitioner has not even claimed, let alone established with evidence, that the beneficiary possesses the necessary continuous experience. We affirm the director's finding to that effect.

The remaining two issues are somewhat interrelated as they regard different aspects of the job offer. 8 C.F.R. § 204.5(m)(4) requires the intending employer to explain how the alien will be paid or remunerated if the alien will work in a professional religious capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support. The petitioner's initial submission contains no information about the terms of employment.

¹ We note that an R-1 visa would have permitted the beneficiary to work for the church as a nonimmigrant for the two years required to meet the experience requirement. Neither the petitioner nor counsel indicates that such a nonimmigrant visa was ever even considered as an option.

The regulation at 8 C.F.R. § 204.5(m)(2) defines "religious occupation" as 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.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The regulation reflects that positions whose duties are primarily administrative or secular in nature do not qualify as religious occupations.

Citizenship and Immigration Services therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

A document from the Vergers' Guild of the Episcopal Church reads, in part:

A verger is a committed lay minister within the Church who assists the clergy in the conduct of public worship, especially in the marshalling of processions. Vergers can be full-time or part-time, paid or volunteer. Their duties can be purely ceremonial or include other responsibilities, such as parish administration, leadership of the worship committee or sexton.

Generally speaking, vergers were [historically] responsible for the order and upkeep of the house of worship, including preparations for the liturgy, the conduct of the laity, and grave-digging. . . . A familiar sight in English cathedrals, vergers have maintained the buildings and furnishings of the Church for many centuries. . . .

The contemporary office of verger is experiencing a rapid expansion within the Episcopal Church. Differing from the church of England, where vergers are often full-time paid employees of the Church, American vergers are more often than not volunteers with a special calling to the ordering and conduct of the Church's liturgy.

A copy of the petitioner's own vergers' manual states, in pertinent part:

[T]he ceremonial duties of the verger are the least important! Knowing what goes on behind the scenes, double-checking the work of others, and being able to fill in for others in a crisis allows the clergy to focus on the upcoming liturgy without having to worry whether the altar candles are lit. The main qualifications for being a Verger are personal maturity and a willingness to serve. At [the petitioning church], the Verger is a Licensed Eucharistic Minister. . . .

During the service, you may have to find a purificator, chalice, wine, cruet, etc. The best way to prepare is to look through the sacristy and vesting room and see where everything is located. . . .

At present, a ceremonial vergier is not used for the Wednesday Eucharist or the early morning Sunday services. . . . A ceremonial vergier is not ordinarily used at Evensong, weddings, funerals or other services. For special services, such as an ordination or confirmation, more than one ceremonial vergier may be assigned. . . .

At [the petitioning church], the Vergier precedes the cross and torches and thus leads the entry and exit processions. . . . Thus, at our church the Vergier has the responsibility for setting the pace of the procession. . . .

The Vergier also leads the cross and torches, and the Deacon (or priest) for the Gospel procession at the 10:30 AM service. The Vergier also leads the baptismal procession when there is a baptism at the 10:30 AM service.

A church newsletter identifies three regularly-scheduled weekly services: Sunday mornings at 8:15 a.m. and 10:30 a.m., and Wednesday evenings at 6:30 p.m. We reiterate, here, the petitioner's own assertion that "a ceremonial vergier is not used for the Wednesday Eucharist or the early morning Sunday Services."

A church brochure lists numerous "Activities & Groups," including the altar guild (a group of women who "prepare the church for every service"), lay readers and chalice bearers ("volunteers who read lessons and/or assist during the service") and the ushers. The list does not mention the vergier, which suggests that the position of vergier, at least at the petitioning church, is not comparable to those listed in the brochure. Other materials refer to the vergier as being an elected post.

In the March 30, 2005 RFE, the director requested information about the beneficiary's position, including a detailed description of the beneficiary's duties and work schedule, and information regarding "the specific wage and other benefits offered." In response, Rev. [REDACTED] stated:

[The beneficiary] will be employed full-time . . . as a Vergier. . . . He will be employed 35 hours per week and the church will provide compensation in the form of housing and a stipend of \$10,000. . . .

The Vergier at [the petitioning church] will be full time ministry with ceremonial duties and include other responsibilities [such] as parish administration, leadership and sexton. The Vergier is responsible for the up keep of the church, the conduct of the laity, preparations for the liturgy, and the training of the liturgical ministers.

Rev. [REDACTED] offered no information about the proffered "housing"; for example, he did not specify whether the church already owned or leased a suitable property, or would purchase or lease one in the future.

The director requested a list of the petitioner's salaried employees and "a breakdown of the number of hours devoted to each of the beneficiary's proposed job duties on a weekly basis." The petitioner did not comply or explain its failure or refusal to do so.

The director denied the petition, stating that the petitioner had "not established that the position being offered is, in fact, a full-time position" or "that the beneficiary has been and will be employed in a religious occupation." On appeal, Rev. ██████ asserts that the beneficiary will work 35 hours per week. Rev. ██████ repeats the earlier list of duties, and adds: "His duties further include the scheduling and training of liturgical ministers and his presence in all the liturgies of the church to insure their seamless execution. Outside of his parochial responsibilities he will be responsible for representing the church at diocesan liturgical functions as well as being an active member of the Verger's Guild of the Episcopal Church."

The petitioner's latest iteration of the beneficiary's duties, including functions that the petitioner never mentioned previously, remains vague and general, with no clear explanation of how these duties can suffice to make up a full-time work week. We note that Rev. Brinkman's assertion that the beneficiary's presence will be required "in all the liturgies of the church" appears to contradict the petitioner's own previously submitted verger's handbook, which states "a ceremonial verger is not used for" two of the petitioner's three weekly Eucharist services. We also note that, by regulation, administrative and custodial duties are not considered traditional religious functions indicative of a qualifying religious occupation.

The petitioner's own evidence indicates that vergers are often part-time, unpaid volunteers. The record is devoid of documentary evidence to establish that the petitioning church, which has existed for nearly 250 years, has ever employed a paid, full-time verger. The petitioner's description of the beneficiary's intended duties appears to have evolved in response to inquiries and findings by the director. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998), and *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), which require that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The post of verger can, in some settings, be a religious occupation within the petitioner's Episcopal denomination, but this is clearly not the case with every verger at every Episcopal church. Taking into account all of the materials submitted by the petitioner, we cannot find that the petitioner has met its burden of proof to establish the existence of a *bona fide* offer of paid, full-time employment as a verger. Therefore, we affirm the director's determination in this regard.

The appeal will be dismissed 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.