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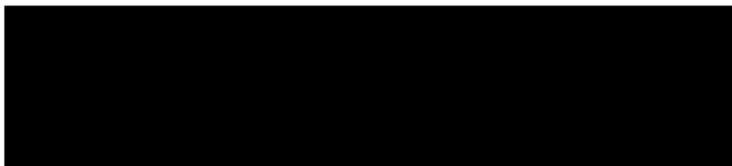
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: MAR 26 2007
EAC 05 181 53312

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:

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 is identified as a Romanian Orthodox 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 deacon. The director determined that the petitioner had not established that it qualifies as a tax-exempt non-profit religious organization. The director also found that the petitioner had failed to establish that the beneficiary's work as a deacon has been, or will be, a paid occupation.

On appeal, an official of the petitioning entity asserts that the petitioner has submitted sufficient evidence to establish eligibility.

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 consider 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.

We note, with regard to part (B) of the above regulation, 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.

In a request for evidence (RFE) dated August 25, 2005, the director quoted 8 C.F.R. § 204.5(m)(3)(i) and instructed the petitioner to submit the necessary evidence. In response, the petitioner has submitted a copy of Internal Revenue Service (IRS) Form 1023, Application For Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code. The petitioner executed this application in 1996. The record contains no evidence that the application was ever filed or approved. On the Form 1023, the petitioner wrote: "Our church is under Ecclesiastical spiritual jurisdiction and Canonical Authority of the Greek Orthodox Archdiocese of Vasiloupolis." The petitioner has also submitted a copy of a document headed "Certificate of Incorporation," which repeats the assertion that the petitioner is "under the Ecclesiastical spiritual jurisdiction and the Canonical Authority of The Greek Orthodox Archdiocese of Vasiloupolis."

The director denied the petition on January 24, 2006, in part because the petitioner had not established that it "was granted exemption from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986." On appeal, the petitioner states "our office was unable to submit evidence of our tax exempt status as the certificate was issued many years ago." The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The regulation, while somewhat flexible in its evidentiary requirements, includes no provision to waive or relax those requirements for an entity that claims to have lost its proof of tax-exempt status.

Although the petitioner has submitted a document with the heading "Certificate of Incorporation," that document reads more like the minutes of a meeting than the organizing instrument of a corporation. The document does not contain a qualifying dissolution clause as described in chapter 3 of IRS Publication 557, *Tax-Exempt Status For Your Organization*. Because the IRS requires a qualifying dissolution clause (relating to the distribution of assets in the event of the dissolution of the corporation), the absence of such a clause from the petitioner's organizing instrument is *prima facie* evidence that the petitioning entity does not qualify as a 501(c)(3) tax-exempt non-profit organization. If, on the other hand, the document called "Certificate of Incorporation" is not, in fact, the petitioner's organizing instrument, then this is itself a disqualifying documentary omission.

With regard to the petitioner's claimed affiliation with a larger religious organization, the record contains no evidence that the Greek Orthodox Archdiocese of Vasiloupolis is, itself, recognized as a 501(c)(3) tax-exempt non-profit religious organization. The record, for instance, does not include a copy of an IRS group exemption letter issued to the Archdiocese, coupled with documentation from the Archdiocese showing that the petitioner is covered by that group exemption. Self-identification as a Greek Orthodox Archdiocese does not compel a presumption of recognition or authorization by the Greek Orthodox Church.

For the above reasons, we concur with the director's finding that the petitioner has not established that it qualifies as a tax-exempt non-profit religious organization under section 501(c)(3) of the Internal Revenue Code of 1986.

We turn now to the interrelated issues of the beneficiary's occupation and 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 June 7, 2005. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a deacon throughout the two years immediately prior to that date. We note that, according to the petitioner, the beneficiary entered the United States on December 9, 2004, and thus spent most of the two-year qualifying period outside the United States.

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.

Citizenship and Immigration Services 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. If a given alien is an uncompensated volunteer who receives no support for his or her work, then such work cannot realistically be called an occupation.

Because qualifying religious work must be remunerative in some fashion, either through the payment of a salary or through the provision of material support, 8 C.F.R. § 204.5(m)(4) requires the petitioner to specify the terms of employment, including remuneration. 8 C.F.R. § 204.5(g)(2) requires the petitioner to submit evidence to establish that the prospective employer is able to pay the proffered wage.

The petitioner's initial filing was a skeletal submission, apparently including only the Form I-360 petition itself. In the RFE issued August 25, 2005, the director instructed the petitioner to "submit a statement from the beneficiary's proposed employer, which establishes that the beneficiary will be employed full-time. . . .

The statement should include all of the following information: official position title, detailed listing and description of the beneficiary's duties . . . and the hours weekly to be spent by the beneficiary performing those duties, as well as the specific wage and other benefits offered." The director also requested "evidence that establishes that the beneficiary has the continuous two years full-time experience . . . for the period immediately prior to June 7, 2005," and stated: "If the [beneficiary's] past experience was gained on a volunteer basis, submit evidence that explains how the beneficiary supported . . . himself." The director further requested "evidence to establish the net and gross annual income for 2003 and 2004 for the proposed employer." In response, the petitioner submitted a letter jointly signed by [REDACTED]

[REDACTED] The letter reads, in part:

The deacon duties include, but are not limited to:

Liturgical/Sacramental assistance to the priest at all worship services. . . .

Inform the priest of any need in the congregation . . . so that the priest can intervene in the appropriate way. Visit people in the hospitals. Assist the priest in pastoral and canonical visits to the houses of the members and also, as a delegate of the parish council, he brings the people to the church. Participate at all the meetings in the church. . . . Be available for any other requirements that the priest may have for him. . . . He also prepares the Sanctuary for Holy Worship, i.e. [REDACTED] Vestments, etc.

He is also in charge of collecting the "Mass" intentions – special prayers intentions for living and deceased parishioners and some of the various parts of The Eucharistic Service. . . .

Schedule of the work hours:

Sunday and Feast-day (weekday) – Worship:

- Otheros / Outrenia / Matins 7 A.M. – 11 A.M.

- Divine Liturgy (Holy Eucharist) 11 A.M. – 3 P.M.

Saturday and Feast-day – Worship Evening:

- Vespers / Vechernia 7 P.M. – 9 P.M.

Special Devotional Services: Supplicatory Healing Services

(various days and times), 3 hours weekly. Funerals, Weddings, Baptisms, Unction.

Similar Worship Services at Clinics / Nursing Homes, 12 hours weekly.

These duties are carried out within 35 – 40 hours weekly.

[REDACTED] stated that the beneficiary began performing the above functions in 2005, but they did not specify how much (if anything) the petitioning church paid the beneficiary for his work. The officials offered no evidence or information regarding the salary offered to the beneficiary. They did not indicate that the beneficiary will be, or has ever been, paid for his work as a deacon. Although the director had specifically requested it, the petitioner provided no evidence to show how the beneficiary had supported himself during the qualifying period. The director is under no obligation to assume, in the absence of documentary evidence, that the petitioner paid the beneficiary.

The petitioner also failed, despite the petitioner's request, to submit evidence of its gross and net income. The petitioner submitted only a letter from a local bank, stating that the petitioner carried a balance of \$14,521.93 as of October 11, 2005. This single data point offers no assurance that the petitioner has been and will be able

to compensate the beneficiary. Furthermore, even if the petitioner had provided more information about its financial status, the petitioner has never specified any salary rate or terms of compensation for the beneficiary, making it impossible to determine the petitioner's ability to meet those terms.

Relating the beneficiary's activities in Romania prior to December 2004, the record contains copies of academic and ecclesiastical documents that attest to his credentials as a deacon, but do not indicate that the beneficiary has ever received a salary or other material support for his work as a deacon. A certificate from the Archdiocese of Tomis indicates that the beneficiary performed the duties of a deacon "from November 1, 2001 until December 31, 2004." The petitioner has indicated that the beneficiary arrived in the United States on December 9, 2004, and therefore he could not have been working in Romania more than three weeks later.

Some materials in the record seem to indicate that the beneficiary is studying for the priesthood. For instance, a translated certificate from the Archbishop of Tomis-Constanta refers to the "request of [the beneficiary] for his ordainment in priesthood." This information would indicate that the beneficiary's diaconate is simply an intermediate step in his priestly formation.

The director denied the petition on January 24, 2006, stating that the petitioner had not "provided any information pertaining to specific wage and other benefits being offered to the beneficiary." The director also found that the petitioner had not submitted adequate financial documentation or established that the beneficiary has been, or will be, employed as a deacon.

On appeal, [REDACTED] states: "The record will show that sufficient documentation was submitted to approve the petition." The record does not support this claim. Eligibility rests on the satisfaction of numerous requirements set forth in the statute and regulations, and the petitioner cannot meet these requirements simply by asserting that the beneficiary has been and will be a deacon.

[REDACTED] asserts that the director's "request to docu[ment] each hour of the workweek is unreasonable," and that the petitioner had shown "that the duties would require considerable hours during the week." The petitioner did not, however, explain the terms of the job offer, establish its ability to pay the beneficiary, or establish that the beneficiary worked continuously as a deacon throughout the 2003-2005 qualifying period. The petitioner did not establish that the position of a deacon is a religious occupation, rather than an uncompensated volunteer function. Because the petitioner never even so much as claimed that the beneficiary has ever been, or will ever be, paid for his work as a deacon, we cannot find that the petitioner has shown that the beneficiary will not be solely dependent on outside employment or solicitation of funds for support. We affirm the director's findings in regard to all the above particulars.

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 met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.