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[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **NOV 29 2007**
WAC 07 062 54200

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.

Mari Glusac

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

On appeal, the petitioner submits copies of newly-executed corporate and tax 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).

The first issue under consideration concerns the petitioner's claimed tax-exempt status. 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization seeking to employ the beneficiary 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.

In a letter accompanying the initial filing, [REDACTED] Director of the petitioning entity, stated that the petitioner "is a charitable non-profit religious organization, which is exempt from taxation under section 510 (c) (3) [*sic*] of the Internal Revenue Code as it relates to religious organizations." The same letter indicates that the petitioning congregation numbers "more than nine hundred." The petitioner's letterhead shows an address in Miramar, Florida; bank statements and tax documents in the record show an address in Hollywood, Florida (also claimed as the beneficiary's home address). The Form I-360 petition shows a Miami address, which is actually counsel's address. The Form I-360 also states the petitioner's "IRS Tax #," or Employer Identification Number (EIN), as [REDACTED]

Accompanying the petition are copies of documents showing that an entity with the same name as the petitioner was incorporated in New York in 1990. The Internal Revenue Service (IRS) issued a determination letter on July 29, 1993, verifying the tax-exempt status of the New York church. The letter shows that the New York church has the EIN [REDACTED] which is the EIN shown on the Form I-360. The 1993 IRS letter is not a *group* determination letter, applicable to subordinate or affiliated churches. The IRS advised: "you should inform us of all changes in your name or address."

Copies of photographs included in the initial filing show various groups, the largest of which consists of a few dozen people, outdoors on what appears to be a lawn enclosed by a picket fence. Indoor photographs show a podium in a low-ceilinged room lit by fluorescent lights. Another indoor photograph shows less than twenty people eating at tables in a different room. Nothing in the photographs inherently shows or suggests a church with "more than nine hundred" members.

The petitioner submitted a copy of a letter which we shall discuss in greater detail in the context of the beneficiary's past experience. For now, we point out only that the January 2, 2002 letter from [REDACTED] and Apostolic Minister of El Calvario Christian Mission in Guatemala, is addressed to "[REDACTED] / President of the Council: El Calvario Christian Mission / New York, USA." The letter contains no street address for the New York church.

On March 9, 2007, the director issued a request for evidence (RFE), instructing the petitioner to submit documentation showing that the petitioner, in Florida, is a qualifying tax-exempt organization. The director stated that documentation relating to a church in New York could not suffice in this regard. The director stated that the petitioner "may submit a directory if the petitioner has a group exemption approval." The director requested "evidence to prove religious activity at [REDACTED], Miami, Florida." This Miami address actually belongs to counsel. The Form I-360 listed this as the petitioner's (and the beneficiary's) address apparently to ensure that counsel would receive correspondence relating to the proceeding.

In response, the petitioner submitted an unsigned letter attributed to [REDACTED] identified here as President of "[REDACTED]." It is not clear whether or not this is the same [REDACTED]

previously identified as “President of the Council: [REDACTED] New York, USA.” The unsigned letter indicates that the petitioner “belongs to the South region of our association.”

The director denied the petition on June 19, 2007, stating that the petitioner had not submitted sufficient evidence to establish that the petitioner, in Florida, is covered by the New York church’s tax exemption. On appeal, the petitioner submits a photocopy of an IRS Form 1023 Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code. The Form 1023, which the beneficiary himself signed on July 10, 2007 (after the denial date), lists the beneficiary’s home address as the petitioner’s address. There is no evidence that the petitioner actually filed the Form 1023 with the IRS.

The Form 1023 also lists the petitioner’s EIN as [REDACTED] which is different from the EIN claimed initially on the Form I-360 petition. A letter from the IRS, dated January 26, 2006, assigned the “provisional Employer Identification Number” [REDACTED] to the petitioner. The day before, January 25, 2006, the beneficiary filed “Electronic Articles of Incorporation” for the petitioner, stating the beneficiary’s home address as both the petitioner’s “principal place of business” and “mailing address.” The articles name the beneficiary as the president of the corporation, his spouse as the secretary, and [REDACTED] of New York as the vice president. The document does not bear [REDACTED] signature.

Although the IRS and corporate documents repeatedly identify the beneficiary’s home address in Hollywood as the petitioner’s place of business, the petitioner also submits fliers and documents showing the Miramar address.

The above documents indicate that the petitioner did not exist as a corporate entity in 2004 or 2005, when the beneficiary was supposedly already working for the petitioner. Furthermore, the documents show that the petitioner had its own EIN in January 2006, nearly a year before the petitioner listed the New York church’s EIN on the Form I-360 petition in December 2006. This use of two different EINs raises very significant questions as to whether or not the petitioner was ever entitled to use the EIN of the New York church in this way. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The petitioner and the New York church are clearly separate corporate entities, and were separate corporate entities in January 2006 when the petitioner claimed the New York church’s EIN as its own. There is no evidence that the New York church’s tax exemption is a group exemption, or that it otherwise covers the petitioning entity in Florida. The only claimed link between the entities in New York and Florida is [REDACTED] sometimes called [REDACTED] and even then the record contains nothing from [REDACTED] in New York to confirm this link. There are only third-party letters and documents referring to [REDACTED] and an unsigned letter purportedly written by [REDACTED] in Texas rather than New York.

As for the IRS Form 1023 application, this document has no weight in the petitioner’s favor. The form did not even exist until after the director denied the petition, at which the beneficiary himself filled out the form, for no other evident purpose than to support the planned appeal.

The documents of record do not support the claimed connection between the New York church and the petitioning entity, and the corporate and IRS documents submitted in this proceeding have every appearance of having been created specifically for immigration purposes. The record contains none of the documentation that a *bona fide* church could be expected to generate in the course of its activities (such as contemporaneous pay records). The record instead establishes a pattern of the petitioner generating documents only after the director asks to see those documents.

Furthermore, even if the petitioner had submitted evidence to establish a link between [REDACTED] New York church and the petitioning entity, such a link would not be *prima facie* evidence that the petitioner is a qualifying tax-exempt church or that the New York church's tax exemption applies to the petitioning church.

The AAO affirms the director's finding that the petitioner has not established its qualifying tax-exempt status.

There remains the issue of the beneficiary's 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 December 28, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a minister throughout the two years immediately prior to that date.

[REDACTED] stated that the beneficiary has been the petitioner's pastor since 2002. The petitioner submitted copies of documents from the 1980s and 1990s, pertaining to the beneficiary's training as a minister. A January 2, 2002 letter from [REDACTED] and Apostolic Minister of El Calvario Christian Mission in Guatemala, reads in part:

[REDACTED]

We received your letter dated on December 7th of 2001 confirming the request of a preacher full time for a church in Miami, Florida. . . .

[The beneficiary will] be the one who moves to Miami and develops the Ministry in that place.

The petitioner did not submit any documentary evidence to show that the beneficiary has, in fact, served as a minister between December 2004 and December 2006. The petitioner submitted a number of fair-quality photocopies of undated photographs of various groups of people, but these photographs do not contain

sufficient information to establish the beneficiary's continuous work as a minister during the relevant two-year qualifying period.

In the RFE, the director requested further evidence regarding the beneficiary's work during the 2004-2006 qualifying period, including evidence of compensation. In response, counsel stated: "The beneficiary has been performing as a pastor . . . in the United States since June 2003. In December 2005 the beneficiary was transferred to Miami, FL. as principal pastor of a petitioner's subsidiary church." This timeline conflicts with the narrative in [REDACTED] earlier letter, summarized above.

As evidence of compensation, the petitioner submitted copies of what purport to be the beneficiary's income tax returns for 2005 and 2006. These returns were not, however, timely prepared on or before April 15 of the calendar year immediately following the year covered by each return. Rather, both returns are dated May 22, 2007. The returns were not prepared until after the director issued the RFE in March 2007, and given the timing, they appear to have been prepared to support the petition, rather than to comply with tax law.

The petitioner submitted copies of IRS Form 1099-MISC Miscellaneous Income statements, indicating that the petitioner paid the beneficiary \$13,000 in 2005 and \$23,140 per year in 2006 and 2007. There are two copies of the 2007 Form 1099-MISC. These documents were submitted, however, in the middle of calendar year 2007. Taken at face value, the IRS forms indicate that the beneficiary earned as much in the first half of 2007 as he did throughout all of 2006, and the petitioner issued the Form 1099-MISC in the middle of the year because the petitioner did not plan any further payments to the beneficiary. More likely, it appears that the Forms 1099-MISC, like the tax returns, were prepared for immigration purposes rather than any good faith compliance with tax law. The record contains no first-hand primary documentation (such as canceled checks) to show that the petitioner actually paid the beneficiary the sums shown on the Forms 1099-MISC, and no certified documentation from the IRS to show that the petitioner actually reported the amounts shown on the Forms 1099-MISC to the IRS.

In denying the petition, the director stated that the petitioner had failed to provide the requested evidence and information regarding the beneficiary's work history during the two-year qualifying period. On appeal, the petitioner does not contest or even address this finding. The AAO affirms the director's un rebutted finding that the petitioner has not established that the beneficiary accrued the required two years of continuous experience immediately preceding the filing of the petition.

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.

ORDER: The appeal is dismissed.