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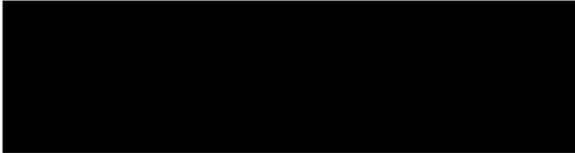
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: WAC 08 243 51488 Office: CALIFORNIA SERVICE CENTER Date: **APR 08 2010**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

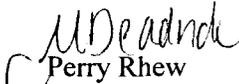
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is 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 an assistant pastor. The director determined that the petitioner had not established that it is a bona fide nonprofit religious organization.

On appeal, counsel states that the petitioner does not have a determination letter from the Internal Revenue Service [IRS] indicating that it is exempt from taxation as described in Section 501(c)(3) of the Internal Revenue Code [IRC]. Counsel asserts that the petitioner “is a tax-exempt religious organization by virtue of being a bona fide nonprofit religious organization. Such organizations are not required by law to obtain an affirmative determination letter.” Counsel submits a letter and additional documentation in support of the appeal.

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 September 30, 2012, 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 September 30, 2012, 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 issue presented on appeal is whether the petitioner has established that it is a bona fide nonprofit religious organization.

The petition was filed on September 11, 2008. The petitioner submitted copies of its articles of incorporation, constitution and bylaws. It also submitted a copy of a July 6, 1976 letter from the State of California Franchise Tax Board exempting the organization from payment of state franchise and income tax and a letter from its pastor reporting its federal tax identification number and stating that verification of its tax exempt status “can be obtained by contacting the State of California IRS office.”

The U.S. Citizenship and Immigration Services [USCIS] regulation at 8 C.F.R. § 204.5(m)(5) provides, in pertinent part:

Tax-exempt organization means an organization that has received a determination letter from the IRS establishing that it, or a group that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the IRC [Internal Revenue Code] of 1986 or subsequent amendments or equivalent sections of prior enactments of the IRC.

Additionally, the regulation at 8 C.F.R. § 204.5(m)(8) provides:

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the [IRS] establishing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or
- (iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the [IRC] of 1986, or subsequent amendment or equivalent sections of prior enactments of the [IRC], as something other than a religious organization:
 - (A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;
 - (B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;

(C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and

(D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

Accordingly, on January 27, 2009, the director issued a request for evidence (RFE), instructing the petitioner to submit, among other documentation, a tax-exempt certification from the IRS in accordance with the regulation.

In response to the RFE, the petitioner, through its senior pastor, [REDACTED], stated:

As a legitimate church, with the IRS Federal Identification Number [REDACTED], we are not required to apply for and obtain recognition of tax-exempt status from the IRS. According to the Publication 1828 "Tax Guide for Churches and Religious Organizations" issued by the IRS, our church that meets the requirements of the IRC section 501(c)(3) is automatically considered tax exempt. On the basis of the legal clause provided by the IRS, our church did not apply for and obtain recognition of the tax-exempt status from the IRS.

In his letter on appeal, counsel asserts:

Although it has not provided the Services with a determination letter issued by the [IRS], the petitioner has submitted the [sic] ample evidence establishing and demonstrating that it is a religious organization exempt from taxation as described in Section 501(c)(3) of the [IRC].

Counsel further asserts that the petitioner has "obtained the tax-exempt status from the California Franchise Tax Board and which clearly establishes and demonstrates that the petitioner is a bona fide nonprofit religious organization exempt from taxation."

The director denied the petition based on the petitioner's failure to provide a valid determination letter from the IRS establishing its status as a religious organization exempt from income taxes under section 501(c)(3) of the IRC.

Counsel asserts that, as a church, the petitioner is "automatically considered exempt and [is] not required to apply for and obtain recognition of the tax-exempt status from the IRS."

However, the regulations governing immigration under the purview of USCIS and those governing federal taxation under the purview of the IRS serve two different purposes. While the IRS regulations may automatically exempt churches as nonprofit organizations for the purpose of determining whether such an organization is required to file a tax return and pay taxes, the USCIS regulation offers no such exemption for those organizations who seek benefits under this visa preference classification. We note that the IRS guidance to churches includes the following advisory:

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.

IRS Publication 1828, *Tax Guide for Churches and Religious Organizations*.

Thus, the IRS recognizes that there may be a legitimate reason why a church may want to obtain official IRS recognition as a tax-exempt organization even when under its own regulations, the church is not required to do so. The IRS provides detailed guidance on how to obtain a certification letter that applies equally to churches as to other religious organizations. *Id.*

This reasoning is echoed in the final order implementing this provision of the new USCIS regulation promulgated on November 26, 2008:

USCIS recognizes that the IRS does not require all churches to apply for a tax-exempt status determination letter, but has nevertheless retained that requirement in this final rule. . . . A requirement that petitioning churches submit a tax determination letter is a valuable fraud deterrent. An IRS determination letter represents verifiable documentation that the petitioner is a bona fide tax-exempt organization or part of a group exemption. Whether an organization qualifies for exemption from federal income taxation provides a simplified test of that organization's non-profit status. 73 Fed. Reg. 72276, 72279 (Nov. 26, 2008).

The petitioner has failed to provide a currently valid determination letter from the IRS establishing that it is a tax-exempt organization. Therefore, the petitioner has failed to establish that it is a bona fide nonprofit religious organization as required by the regulation at 8 C.F.R. § 204.5(m)(8).

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.