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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 08 236 51791 Office: CALIFORNIA SERVICE CENTER Date: **APR 29 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:



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).

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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 Roman Catholic religious order. 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 nun. Based on the results of a compliance review site visit, the director determined that the petitioner had not established that it is a bona fide nonprofit religious organization.

Counsel submits a brief 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 is whether the petitioner has established that it is a bona fide nonprofit religious organization.

The U.S. Citizenship and Immigration Service (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 [Internal Revenue Service] 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 Internal Revenue Service (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.

With the petition, the petitioner submitted a copy of a January 19, 2001 letter from the IRS to the [REDACTED] in New York, granting it tax-exempt status under section 501(c)(3) of the IRC as an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the IRC. We note that organizations under section 170(b)(1)(A)(vi) of the IRC may be either religious or nonreligious. Further, the letter to the DMMM in New York does not indicate that it is a group exemption for all organizations of the DMMM.

The petitioner also provided a copy of *The Official Catholic Directory* for 2003, which listed the DMMM as one of the organizations of the Catholic Church.

The regulation at 8 C.F.R. § 204.5(m)(12) provides:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

The record reflects that an immigration official visited the petitioner's address of record on May 14, 2007 for the purpose of conducting a compliance review verification. The investigator found that the petitioner's address was a home in a residential neighborhood. No one answered the door during the time of his visit. According to the investigating officer, no phone number was included on the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, such that he could call the petitioner and arrange an interview.¹ The record does not indicate that the investigator made any other attempts to contact the petitioner or to perform another site visit.

In a Notice of Intent to Deny (NOID) dated January 16, 2009, the director advised the petitioner of the compliance review visit and that IRS records "confirmed that the group exemption under [REDACTED] 1, does not cover the [petitioner's] alleged address." The director then noted that the petitioner's address was a residence and not a church. The director instructed the petitioner to provide a copy of its tax

¹ We note that the Form I-360 requires a phone number only if the beneficiary meets certain criteria, which does not appear to have been present for the petition under review at the time of the investigator's visit.

exempt certification from the IRS and specifically noted that “the IRS determination letter for 501(c)(3) exemption must indicate the petitioner’s IRS Employer Identification Number [EIN]” The director also requested documentary evidence that the petitioner existed at the address identified in its petition, and quarterly wage reports for all of its employees.

In response, the petitioner resubmitted the documentation previously submitted, and submitted an excerpt from *The Official Catholic Directory* for 2008 and a copy of a page from the website of the Archdiocese of Detroit, each of which indicated that the DMMM was associated with the Catholic Church. The petitioner also submitted an excerpt from the *2007 Catholic Directory* for the Archdiocese of Galveston-Houston, which listed the petitioning organization as a member. The petitioner, through [REDACTED], who signed the petition, stated:

The Texas District of the DMMM is headquartered at [REDACTED] Houston . . . This location is a private residence restricted for residency of DMMM members working out of the Texas District. Currently, four (4) DMMM reside at [this address] using it as a home base from which to engage in community outreach. The DMMM consider this residence as our “convent” as “convent” relates not just to a brick and mortar establishment but also to community living.

The petitioner failed to provide a determination letter from the IRS with the petitioner’s EIN establishing that it is exempt from taxes under section 501(c)(3) of the IRC. On that basis alone, the petition may not be approved. 8 C.F.R. § 103.2(b)(14). The director denied the petition, again citing the results of the compliance verification visit and determining that the documentation submitted in response to the NOID was insufficient to establish that the petitioner qualifies as a bona fide nonprofit religious organization.

On appeal, the petitioner provides a copy of a July 1, 2007 letter issued to the United States Conference of Catholic Bishops by the IRS granting the organization a group exemption for all of its organizations listed in *The Official Catholic Directory* for 2007. While the petitioner did not provide a copy of the 2007 directory, it resubmitted its previous documentation including an excerpt from the 2008 directory and submitted a copy of the 2006 directory. The petitioner also submitted information from the *2008 Catholic Directory* for the Archdiocese of Galveston-Houston that specifically lists the petitioning organization at the address listed on its petition. However, the AAO is precluded from considering the requested evidence on appeal because the petitioner failed to provide it in response to the director’s January 16, 2009 request.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Accordingly, the petition may not be approved because the petitioner failed to establish that it was a qualifying tax exempt organization at the time the director issued her decision. In addition, the petition may not be approved because the petitioner failed to respond to the director's specific request for evidence of its tax exempt status.

Beyond the director's decision, the petitioner has not established that the beneficiary was continuously employed in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the visa petition. The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The regulation at 8 C.F.R. § 204.5(m) provides that to be eligible for classification as a special immigrant religious worker, the alien must:

(4) Have been working in one of the positions described in paragraph (m)(2) of this section, either abroad or in lawful immigration status in the United States, and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. The prior religious work need not correspond precisely to the type of work to be performed. A break in the continuity of the work during the preceding two years will not affect eligibility so long as:

(i) The alien was still employed as a religious worker;

(ii) The break did not exceed two years; and

(iii) The nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

Therefore, the petitioner must show that the beneficiary worked in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously for at least the two-year period immediately preceding the filing of the petition. The petition was filed on September 2, 2008. Accordingly, the petitioner must establish that the beneficiary had been continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

The regulation at 8 C.F.R. § 204.5(m)(11) provides:

Evidence relating to the alien's prior employment. Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work, must have occurred after the age of 14, and if acquired in the United States, must have been authorized under United States immigration law. If the alien was employed in the United States during the two years immediately preceding the filing of the application and:

- (i) Received salaried compensation, the petitioner must submit IRS documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of income tax returns.
- (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.
- (iii) Received no salary but provided for his or her own support, and provided support for any dependents, the petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS.

If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

In its letter submitted in support of the petition, the petitioner stated that the beneficiary “made her final profession of religious vows” on November 27, 2005 and that she had been working in an R-1 nonimmigrant religious status in the United States since October 14, 2007. The petitioner submitted an unsigned letter dated June 1, 2008 from [REDACTED] in Nigeria, which states that the beneficiary had been a “full fledged member of the congregation” for eight years and that she had been sent to live and work in Texas. The petitioner stated that the beneficiary is paid \$7.75 per hour by the group home to which she is assigned, and that she “remits her earnings to the DMMM, who in turn, provide [her] a stipend to cover her necessities, and provide food and lodging to her.”

In her letter submitted in response to the NOID, [REDACTED] stated that she was enclosing documents to show that that the DMMM owned a convent that was in her name because of financing requirements. However, the record contains no such documentation. While the petitioner submitted photocopies of photographs that purportedly depict the convent, the photographs do not contain sufficient information to confirm that they are accurate and actual representations of the petitioner's location and purpose.

The petitioner also provided a copy of a bank statement that allegedly shows that the beneficiary deposited her earnings. However, the document, which shows an address for the DMMM in Inkster, Michigan, does not identify either the beneficiary or the source of the deposits.

Accordingly, the petitioner has failed to establish that the beneficiary was continuously employed in a qualifying religious occupation or vocation for the two years immediately preceding the filing of the visa petition.

Additionally, the petitioner has failed to establish how it will compensate the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(10) provides that the petitioner must submit:

Evidence relating to compensation. Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

The petitioner stated that the beneficiary is paid an hourly wage by the “group home” to which she is assigned, that she remits these earnings to DMMM, who in turn provide her with a stipend, food and lodging. The petitioner provided no documentation of any earnings by the beneficiary or any compensation paid to the beneficiary by the DMMM. Additionally, the record is not clear as to whether the beneficiary’s earnings are paid by the DMMM or through some other source. The regulation requires that the beneficiary’s salaried or non-salaried compensation must be paid by the attesting employer. 8 C.F.R. § 204.5(m)(7)(xi). The petitioner has, therefore, failed to provide verifiable evidence of how it intends to compensate the beneficiary.

Finally, the petitioner has not established that the beneficiary will be engaged in full time employment. We note that the attestation provided by the petitioner was submitted on a Form I-129 Supplement to the R-1 classification. The R-1 classification requires the petitioner to attest that the beneficiary will work a minimum of 20 hours a week, which is not full time employment as required by the regulation at 8 C.F.R. § 204.5(m)(2). The petitioner has not submitted documentation of the beneficiary’s expected hours of work and therefore has not established that the beneficiary will be engaged in full time employment (at least 35 hours per week).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa application 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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.