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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

C1

[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **AUG 31 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:

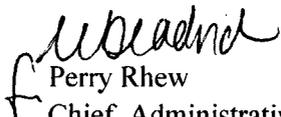
[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
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 (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner describes itself as "an Ecclesiastical Church Ministry." 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 associate pastor. The director determined that the petitioner had not submitted required documentation of its tax-exempt status.

On appeal, the petitioner submits materials in support of its assertion that it has applied for recognition of tax-exempt status.

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).

In proceedings such as this where the petitioner is identified as a church, the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(8) requires the petitioner to submit either (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.

The petitioner filed the Form I-360 petition on September 18, 2008. The petitioner's initial submission included information about Woodward Families Helping Families (WFHF), an entity related to but separate from the petitioner, that handles the petitioner's payroll and administrative functions. The petitioner did not submit information about its own corporate or tax-exempt status.

While the petition was pending, USCIS published a rule setting forth new regulations for special immigrant religious worker petitions. Supplementary information published with the new rule specified: "All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008).

On February 4, 2009, the director advised the petitioner of the new regulations and instructed the petitioner to submit newly required evidence, including an IRS determination letter establishing the petitioner's tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

In response, the petitioner submitted a copy of the IRS determination letter issued to WFHF in March, 2006, as well as a letter in which ██████ stated: "Under IRS Code 508 a church automatically qualifies as a 501(c)(3). Therefore [the petitioner] has an automatic tax exempt status."

The director denied the petition on April 2, 2009, stating that the petitioner did not submit a copy of an IRS determination letter to establish the petitioner's status as a tax-exempt religious organization. On appeal, ██████ states: "We are applying for a tax exempt determination letter." Materials submitted on appeal indicate that the petitioner filed its application with a check dated April 30, 2009, meaning that the petitioner did not file the application until several weeks after the denial of the petition.

Counsel acknowledges that the new regulations require the petitioner to submit a valid IRS determination letter, but states that the petitioner "should have been afforded the opportunity to provide that letter" before the director denied the petition.

The director did afford the petitioner such an opportunity. In the February 4, 2009 notice, the director instructed the petitioner to submit an "IRS determination letter for 501(c)(3) exemption" showing "the petitioner's IRS Employer Identification Number." The petitioner, at that time, responded by asserting that the petitioner "has an automatic tax exempt status."

We do not dispute the IRS's interpretation of its own requirements, but in this proceeding, the petitioner seeks a benefit not from the IRS, but from USCIS. 8 C.F.R. § 204.5(m)(8) clearly requires the petitioner to submit an IRS determination letter. When USCIS published this regulation, supplementary information published with the regulation explained USCIS's reasoning:

Several commenters objected to the proposed requirement that petitioners must file a determination letter from the IRS of tax-exempt status under IRC section 501(c)(3),

26 U.S.C. 501(c)(3), with every petition. Commenters pointed out that the IRS does not require churches to request a determination letter to qualify for tax-exempt status. A designation that an organization is a “church” is sufficient to qualify for tax-exempt status. Although some churches choose to request a formal IRC section 501(c)(3) determination, they are not required to do so. . . .

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. See Internal Revenue Service, *Tax Guide for Churches and Religious Organizations: Benefits and Responsibilities under the Federal Tax Law* (IRS pub. no. 1828, Rev. Sept. 2006). 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.

Requiring submission of a determination letter will also benefit petitioning religious organizations. A determination letter provides a petitioning organization with the opportunity to submit exceptionally clear evidence that it is a bona fide organization.

73 Fed. Reg. 72276, 72279-80 (Nov. 26, 2008). In this proceeding, the issue is not whether the IRS would automatically regard the petitioner as tax-exempt, but whether the petitioner has produced the required IRS determination letter that USCIS regulations require. The petitioner, on appeal, shows that it has begun taking steps to obtain the necessary letter, but these preliminary steps do not show that the IRS recognizes the petitioner as tax-exempt. We agree with the director’s finding in this regard.

Even if the petitioner had actually submitted the IRS letter on appeal, it would still be true that the petitioner did not provide that document when the director specifically requested it. When the petitioner is put on notice of required evidence and given a reasonable opportunity to submit it before the director denies the petition, but the petitioner does not submit that evidence until the appeal, the AAO will not consider that evidence for any purpose. See *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). 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).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the AAO will dismiss the appeal.

ORDER: The appeal is dismissed.