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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
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 12 2010
WAC 07 012 54129

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, California Service Center, denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO subsequently remanded the petition to the director for a new decision based on revised regulations. The director again denied the petition and certified the decision to the AAO. The record does not support the stated grounds for denial, and the AAO must therefore withdraw the decision. Nevertheless, because the record shows other disqualifying factors, the AAO will remand the petition for further action and consideration.

The petitioner is a church of the Assemblies of God denomination. 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 bona fide tax-exempt religious organization.

In response to the certified decision, the petitioner submits arguments from counsel and copies of previously submitted 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 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 only stated ground for denial concerned the petitioner's tax-exempt status. The U.S. Citizenship and Immigration Service (USCIS) regulation at 8 C.F.R. § 204.5(m)(8) reads:

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 Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, 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.

The record contains three versions of an IRS determination letter, affirming the petitioner's tax-exempt status. The director denied the petition based on the finding that "[a]ll three letters . . . are identical except for the altered address section on the letters." The record, however, does not support this finding. The format of the earliest submission of the letter is similar, but not identical, to the format of later submissions. For example, in the phrase "Effective Date of Exemption," the earliest letter has the word "Exemption" on the line below the rest of the phrase. Subsequent versions of the letter have the entire phrase on one line.

While the director was understandably concerned about the petitioner's use of two different addresses, the record shows that one address is the physical location of the church, whereas the other address is that of the house where the beneficiary lived at the time; it was not the address of an unrelated church.

Because the record does not support the only stated ground for denial, we must withdraw the director's decision. Nevertheless, review of the record reveals several other factors that prevent approval of the petition.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

While the petitioner's appeal was pending, USCIS published new regulations on November 26, 2008, which applied to all petitions and appeals pending on that date. Acting upon the AAO's instructions, the director notified the petitioner of the new regulations on April 10, 2009, and informed the petitioner that failure to meet the new evidentiary requirements would result in denial of the petition.

The USCIS regulation at 8 C.F.R. § 204.5(m)(7) states, in part: "An authorized official of the prospective employer of an alien seeking religious worker status must complete, sign and date an attestation prescribed by USCIS." In response to the director's notice, the petitioner submitted an attestation signed not by any authorized official of the prospective employer, but by counsel. There is no evidence that counsel is an official of the petitioning entity, or was such an official at the time counsel signed the attestation. Therefore, the petitioner has not met this requirement. This omission is, by itself, grounds for denial of the petition.

We note that the director had already advised the petitioner that the attestation must be signed by an authorized official of the employing entity. Therefore, the petitioner has already had the opportunity to provide this required document, and has failed to do so. The director is not required to request the attestation a second time, and the petitioner's future submission of a proper attestation will not overcome the petitioner's failure to submit the document when requested. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988).

The USCIS regulations at 8 C.F.R. §§ 204.5(m)(4) and (11) require the petitioner to show that the beneficiary has been working as a minister or 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 October 13, 2006. The beneficiary was in the United States throughout the two-year qualifying period. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work in lawful immigration status from October 13, 2004 until the filing date.

At the time of filing, the USCIS regulation at 8 C.F.R. § 214.2(r)(6) read, in part:

Change of employers. A different or additional organizational unit of the religious denomination seeking to employ or engage the services of a religious worker admitted under this section shall file Form I-129 with the appropriate fee. . . . Any unauthorized change to a new religious organizational unit will constitute a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act.

According to documents reproduced in the record, the beneficiary entered the United States in February 2002, under an R-1 nonimmigrant visa that entitled him to work at the [REDACTED] until February 2005. Subsequently, the petitioner filed Form I-129, receipt number EAC 05 084 53411, the approval of which extended the beneficiary's R-1 status for another two years, from February 7, 2005 to February 6, 2007. The record does not show that the beneficiary was authorized to work for the petitioner in Hartford, Connecticut (as opposed to [REDACTED] before February 2005.

If the beneficiary entered the United States ostensibly to work in [REDACTED], but instead worked at a separate church in Hartford, then he violated his status. In such a case, his employment from October 2004 to February 2005 was not authorized or lawful. Qualifying prior experience, if acquired in the United States, must have been authorized under United States immigration law. 8 C.F.R. § 204.5(m)(11). Employment at any site other than the [REDACTED] was not authorized under immigration law.

We stress that evidence of denominational affiliation between the churches in Hartford and [REDACTED] cannot suffice to establish that the beneficiary remained in status in late 2004 and early 2005. The issue is not whether the beneficiary remained in the same denomination, but whether he abided by the terms of his R-1 status, which was granted for a specific job at a specific location rather than as a broad and general license to work at any given Assembly of God church in the United States.

Based on the above discussion, the record does not establish that the beneficiary remained in lawful immigration status throughout the two-year qualifying period. We stress that the approval of the Form I-129 petition filed in February 2005 is not retroactive evidence that the beneficiary had maintained status prior to that date. This finding constitutes a second ground for denial of the petition.

Finally, the USCIS regulation at 8 C.F.R. § 204.5(m)(12) reads, in part:

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.

USCIS documents indicate that a USCIS officer attempted to conduct a site inspection on several occasions in March 2007, but found the church empty. Therefore, to date there has not been a satisfactory completion of a site inspection. As such, the petitioner has not met this "condition for approval of any petition."

Any of the above stated grounds, alone or in combination, would be a sufficient basis to deny the petition, but the director did not state these factors in the certified denial notice. Therefore, the AAO will remand this matter to the director for a new decision, addressing the points raised above. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, regardless of the outcome, is to be certified to the Administrative Appeals Office for review.