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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 51452 Office: CALIFORNIA SERVICE CENTER Date: **MAR 25 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).

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 outreach coordinator. The director determined that the petitioner had not established that it is a bona fide nonprofit religious organization.

On appeal, counsel argues that the requirement that the petitioner provide a “valid determination letter from the Internal Revenue Service . . . contravenes long standing constitutional due process protections against ‘retroactive legislation’” and violates the due process clause and the equal protection clause of the 14th Amendment.

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 petition was filed on September 11, 2008. Pursuant to requirements under section 2(b)(1) of the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391, 122 Stat. 4193 (2008), the United States Citizenship and Immigration Services (USCIS) issued 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. If documentation is required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008).

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 Internal Revenue Service (IRS). The petitioner was instructed to submit the requested documentation within 30 days of the date of the RFE.

The new 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.

In response to the RFE, the petitioner stated that “[a] church is not required to have the [IRS] Registration” but that “due to the law change covering religious workers,” it “legitimately filed and requested” a determination from the IRS and that the request was pending. The petitioner stated that the process would take 10 months, and it could not provide the certification in the time frame required by the RFE. The petitioner submitted a copy of the documentation that it provided to the IRS and the postal receipt evidencing its mailing. The petitioner further stated that it would provide the letter when it was issued by the IRS. We note that pursuant to the regulation at 8 C.F.R. § 103.2(b)(8)(iv), additional time to respond to an RFE may not be granted. We further note that as of the date of this decision, more than a year after it posted the certification request, the petitioner has not provided USCIS with a copy of the IRS determination letter. On that basis alone, the petition may not be approved. 8 C.F.R. § 103.2(b)(13)(i).

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 the USCIS regulation requiring a determination letter from the IRS conflicts with the IRS regulations that automatically exempt churches as nonprofit organizations and contravenes “the constitutionally protected ‘equal protection’ rights of churches.”

Counsel’s argument is without merit. First, 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 immigration laws. 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.*

Counsel also asserts that the USCIS requirement for a determination letter violates the equal protection clause of the 14th Amendment. Counsel again argues that because the IRS has offered a definition of “church,” the USCIS requirement of a valid determination letter “exceeds the requirements of the IRS and contravenes the Religious Freedom [Restoration] Act of 1993 (RFRA).” As discussed earlier, the IRS and USCIS regulations serve different purposes, and while a currently valid letter from the IRS recognizing an organization as a church is required under USCIS regulation, the IRS automatic exemption of a church as nonprofit is unrelated to the USCIS requirements that the organization establish itself as both a religious organization and as a nonprofit organization for immigration purposes.

Counsel further argues that by requiring an IRS determination letter, the USCIS regulation imposes a “categorical bar” to the petitioner’s request for a visa under this classification. Counsel’s argument is again without merit, as the petitioner is not prohibited from filing a visa petition under this classification. Additionally, counsel’s arguments regarding the RFRA were addressed in the comments accompanying the final rule:

F. Religious Freedom Restoration Act of 1993 (RFRA)

Commenters asserted that the proposed regulation would violate the First Amendment, Const. of the United States, Amdt. I (1791), and the Religious Freedom Restoration Act of 1993, Public Law 103-141, sec. 3, 107 Stat. 1488 (Nov. 16, 1993) (RFRA), found at 42 U.S.C. 2000bb-1, by placing a substantial burden on a religion that is not in the furtherance of a compelling government interest, or at least not furthered by the least restrictive means. Some commenters stated that preventing fraud was commendable but that a compelling government interest has not been established. Several commenters said that filing petitions for nonimmigrants or having to request an extension of status after only one year would place undue financial and paperwork burdens on religions. Additionally, the commenters stated that the proposed definitions of religious occupation and religious vocation prohibited their denominations from utilizing the program.

USCIS disagrees with the specific notion that the final rule violates the RFRA. The RFRA provides:

Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except * * * if it demonstrates that application of the burden to the person—

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

Public Law 103-141, sec. 3, 42 U.S.C. 2000bb-1. The final rule is intended to permit religious organizations to petition for admission of religious workers under restrictions that have less than a substantial impact on the individual's or an organization's exercise of religion. A petitioner's rights under RFRA are not impaired unless the organization can establish that a specific provision of the rule imposes a significant burden on the organization's religious beliefs or exercise. Further, this rule is not the sole means by which an organization or individual may obtain admission to the United States for religious purposes, and DHS believes that the regulation, and other provisions of the INA and implementing regulations, can be administered within the confines of the RFRA. An organization or individual who believes that the RFRA may require specific relief from any provision of this regulation may assert such a claim at the time they petition for benefits under the regulation.

Nor does this final rule impose a “categorical bar” to any religious organization's petition for a visa or alien's application for admission. Instead, the rule sets forth the evidentiary standards by which USCIS will adjudicate nonimmigrant and immigrant petitions.

USCIS also does not believe that the new requirements will reduce the diversity or types of religious organizations that practice in the United States or the types of religious workers whom religious organizations could hire. Changes have been made so that the final definitions of “religious occupation,” “religious vocation,” “minister,” and “denomination” will not prevent religious organizations from using the religious worker program as some commenters claimed. Additionally, rather than the proposed one year initial period of admission and two extensions of two years each, the final rule permits up to 30 months for the initial period of admission and one extension of up 30 months. Therefore, the final rule imposes a much smaller financial and paperwork burden on

petitioners than the proposed rule.

Eradicating fraud where fraud has been determined to exist in one-third of nonimmigrant visa petitions, as discussed in the proposed rule, is a compelling government interest to ensure the integrity of the immigration process as well as for the protection of national security. See 72 FR at 20442. Therefore, the final rule retains the requirements that a religious organization file a petition for each religious worker and submit an IRS determination letter establishing the organization's tax-exempt status. Additionally, USCIS will maintain the discretion to conduct on-site inspections as USCIS believes they are the most effective and least restrictive means of combating fraud in the religious worker program.

USCIS will consider all of the factual evidence presented in support of a petition for a religious worker under the provisions of the rule. After reviewing the comments and the applicable law, however, USCIS does not believe that the evidentiary requirements of the rule constitute a violation of the RFRA.

Counsel further argues:

A federal government action is subject to the “compelling interest” test under the Equal Protection Clause of the Fourteenth Amendment if it discriminates against a religious exercise. In order to maintain an equal protection claim with any significance independent of the free exercise clause of the first amendment, the petitioner must allege and prove that they received different treatment from other similarly situated individuals or groups. Clearly, a distinction has been drawn by the new regulation in denying the religious worker or minister visa petition of a “church” as described by the IRS regulations and holdings whilst authorizing every other type of religious entity recognized by the IRS to sponsor their religious worker or minister for an employment visa.

Counsel’s argument has no merit. First, the USCIS regulation does not prohibit a church from filing an employment-based visa petition on behalf of a qualifying alien.. Second, the USCIS regulation, contrary to counsel’s argument that a church is treated differently, subjects the church to the same requirement to provide an IRS determination letter as any other entity applying for visa classification under section 203(b)(4) of the Act. Counsel has provided no example of how this requirement interferes with the petitioner’s right to exercise its religion.

The petitioner has failed to provide a currently valid determination letter from the IRS establishing that it is a tax-exempt organization. Again we note that while the petitioner stated that it had applied for such a letter, it has failed to provide a copy to USCIS in response to a specific request for evidence. Therefore, the petition may not be approved because the petitioner failed to submit requested evidence. 8 C.F.R. § 103.2(b)(13)(i). In addition, the petition may not

be approved because 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 petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.