

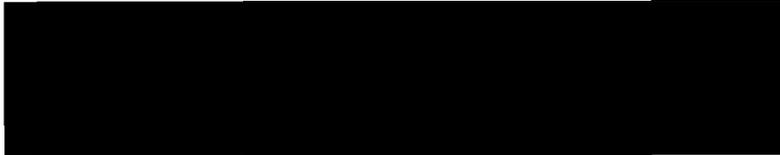
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **MAY 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:

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) remanded the matter for consideration under new regulations. The director again denied the petition and, following the AAO's instructions, certified the decision to the AAO for review. The director's decision will be withdrawn and the petition will be approved.

The petitioner is a "para-church organization" organized "to promote the Christian faith through the bible study, praise and worship, teaching, and other means which will advance the Gospel." 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 missionary. The director determined that the petitioner does not appear to be operating at the claimed capacity.

On certification, counsel asserts that the director "abused [her] discretion by failing to properly consider all the evidence presented, and denied the petition without proper reasoning." The petitioner submits additional documentation on certification.

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 certification is whether the petitioner exists as a religious organization as alleged in its petition.

The record reflects that on May 2, 2008, a compliance verification review was conducted at the site listed on the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. The visit revealed that the petitioner was no longer at the address listed and building security advised the investigator that the petitioner had been evicted as an unapproved sub-tenant. The petitioner had not left a forwarding address and the phone number listed was no longer in service. Therefore, on May 22, 2008, the director notified the petitioner of her intent to deny the petition.

In response, the petitioner submitted a copy of a June 2, 2008 letter from the property manager of Fobare Commercial, L.P., in which she stated that the petitioner was an approved sub-tenant of TriTech Software Development Corporation from May 1, 2007 through April 30, 2008, and that when TriTech's lease expired, the petitioner "vacated the premises in good standing." The petitioner also provided copies of the master lease and sublease for the premises and a copy of an October 2, 2006 letter from the owner of the premises offering no objections to the sublease between the petitioner and TriTech Software Development.

The record reflects that the petitioner vacated the premises listed on its Form I-360 petition two days before the site visit by an immigration officer. In response to the NOID, the petitioner also submitted a copy of its lease agreement with Stadium Plaza, Ltd. which became effective on May 1, 2008 for 1,711 square feet at a rate of \$650 per month. We note that the telephone number on the petitioner's letterhead is the same as its old number. The petitioner does not offer an explanation as to why the number was not in service on May 2, 2008, when the investigator attempted to call.

As required under section 2(b)(1) of the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391, 122 Stat. 4193 (2008), U.S. Citizenship and Immigration Services (USCIS) promulgated a rule setting forth new regulations for special immigrant religious worker petitions which became effective on November 26, 2008. 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 December 11, 2008, the AAO remanded the petition for consideration and action pursuant to the new regulations.

The new USCIS 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.

In a NOID issued on remand, the director advised the petitioner that its new premises "are not sufficient to accommodate 300 members" and that the map provided with its prior lease "does not show any area that would be suitable for a church with 300 members." The director advised the petitioner that it did not appear to be operating at its claimed capacity.

In response, the petitioner stated that it is not a church but an organization that "develops and directs bible study classes" and that these classes are held in different locations. The petitioner also provided letters from several churches stating that the petitioner used their spaces for its bible study classes. Documentation reflects that the petitioner's "300 members" consist of those who attend its classes in Arlington and Plano, Texas. The petitioner reiterates its argument on certification and provides additional documentation.

The regulation provides that USCIS may verify the petitioner's claims through any means it determines appropriate. The petitioner has provided a reasonable explanation and sufficient corroborative documentation to explain why it was not at the location provided on its petition. Based on the new lease, the director concluded that the petitioner could not provide the services it alleges in the space it leased. However, we find that the director's conclusion was based on her assumption that the petitioner provided its services in its leased spaces. Evidence of record does not support this conclusion.

The AAO finds that the petitioner has provided sufficient documentation to establish that it exists in the capacity that it alleges. The petitioner did not allege that it was a church or that it held church services. The petitioner also provided sufficient documentation of its physical location both at its prior address and its current address.

The director's decision is therefore withdrawn. In visa petition 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. The petitioner has met that burden.

ORDER: The director's decision of January 31, 2009 is withdrawn. The petition is approved.