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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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DATE: JUL 07 2011 Office: CALIFORNIA SERVICE CENTER

FILE:

IN RE: Petitioner:   
Beneficiary:

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.

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 \$630. 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 and it 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 a bible teacher. The director determined that the petitioner had not established that it is a bona fide nonprofit religious organization, that it exists as a religious organization, and that there is a valid job offer to the beneficiary.

The petitioner submits 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 first issue is whether the petitioner has established that it is a bona fide nonprofit religious organization.

The 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 section 501(c)(3) of the IRC 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 Internal Revenue Code [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.

On June 1, 2004, the petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, identifying itself as [REDACTED] with a federal employer identification number [REDACTED]. The petitioner submitted a copy of a December 3, 2001 letter from the [REDACTED] stating that [REDACTED] was associated with the [REDACTED]. The letter further stated, "[REDACTED] is an organization which is associated with the [REDACTED]. We have approximately 500 churches and missions in our organization. We are listed in the list of organizations described in 170(c) of the IRS Code of 1954 lists." The petitioner submitted no other documentation, such as a group exemption letter, to establish its tax exempt status.

On October 2, 2007, an immigration officer (IO) visited the petitioner at the address listed on the Form I-360. The IO discovered an empty office with a sign indicating that the space was available for lease. The IO contacted the [REDACTED] and was advised that the petitioner had moved to [REDACTED] Texas and had changed its name to [REDACTED]. The IO reported that he asked [REDACTED] of the [REDACTED] if the new church was covered under the organization's section 501(c)(3) certification granted by the IRS. After consultation with [REDACTED] accounting department, Ms. [REDACTED] advised the IO that the new church was not included in the group coverage for [REDACTED]. After talking with the petitioner's pastor, the IO again called [REDACTED] and was advised that [REDACTED] is covered under the group exemption granted to [REDACTED].

In a Notice of Intent to Deny (NOID) dated October 23, 2009, the director notified the petitioner of the IO's report and provided the petitioner with an opportunity to resolve the discrepancy. In response, the petitioner submitted a copy of a certificate of amendment from the Office of the [REDACTED] for the State of Texas reflecting the organization's new name of [REDACTED]. The petitioner also submitted an April 21, 2009 letter from the [REDACTED] signed by [REDACTED], who stated that the [REDACTED] "is affiliated with" the SBTC and "are listed on our website under the [REDACTED] link . . . Therefore, they qualify as a 501(c)(3) organization as a part of our group tax exemption ruling." The petitioner provided a copy of an April 23, 2008 letter from the IRS to the [REDACTED] confirming the organization's group exemption and a copy of an October 2, 2001 letter from the IRS granting the [REDACTED] a group exemption under section 501(c)(3) of the IRC. At the time of filing, the petitioner did not claim, and provided no evidence, that it was covered under the group exemption granted to the [REDACTED].

On appeal, the petitioner submits an excerpt from the 2005 annual of the [REDACTED] that lists the petitioner in its index of churches. The petitioner also submits a copy of a July 11, 2005 letter from the [REDACTED] signed by Mr. [REDACTED] in which he stated that the petitioning organization, as The [REDACTED] was listed on page 7 in its 2003 directory of [REDACTED] churches; however, the petitioner submits no actual documentary evidence of the listing. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The 2001 letter from the [REDACTED] submitted with the petition, indicated that the petitioner was a member of that association which, in turn, was associated with the SBC. A 2005 letter and an April 2009 letter from the [REDACTED] indicate that the petitioner is also a member of that organization and covered under the [REDACTED] group exemption. The petitioner provides no documentation to establish the relationship of the [REDACTED] to the [REDACTED]. However, a review of the [REDACTED] website indicates that the [REDACTED] Association is an independent local association of the [REDACTED] and the [REDACTED] is an independent state convention of the [REDACTED]. No documentation in the record establishes that either the [REDACTED] Association or the [REDACTED] and their affiliated churches are covered under an IRS group exemption granted to the [REDACTED]. Rather, the [REDACTED] has its own group exemption. Further, the petitioner submitted no documentation to establish the relationship of the [REDACTED] Association to the [REDACTED].

The petitioner did not provide sufficient documentation with the petition to establish that it was a bona fide nonprofit religious organization. At filing, the petitioner stated that it was a member of the [REDACTED] Association. However, in response to the NOID, it stated that it was a member of the [REDACTED] and submitted documentation to establish its relationship with that organization as of April 2009. The petitioner provided no documentation to explain the relationship of the [REDACTED] Association with the [REDACTED]. On appeal, the petitioner submitted documentation to establish that it is recognized under the group tax exemption granted to the [REDACTED] and purports to have been a member of the [REDACTED] since 2003. This appears to contradict the petitioner's earlier assertion that it was affiliated with the [REDACTED] Association as it provided no direct link between the two organizations. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Further, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

Accordingly, the petitioner submitted insufficient documentation with the petition to establish that it was a bona fide nonprofit religious organization. Additionally, the petitioner subsequently claimed to be a member of a different religious association and that it derived its tax-exempt status from that organization. The petitioner has therefore failed to establish that it was a bona fide nonprofit religious organization as of the date the petition was filed.

The second issue is whether the petitioner has established that it exists as an organization and therefore has extended a valid job offer to the beneficiary.

The IO reported that he visited the petitioner's reported new location at [REDACTED] at two different times on October 4, 2007. On both occasions, the building was locked and there were no

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<sup>1</sup> See [www.sbc.net](http://www.sbc.net), accessed on June 29, 2011. A copy of the search has been incorporated into the record.

cars in the parking lot. Phone calls to the church went unanswered until the IO finally reached [REDACTED] on October 10, 2007.

In response to the NOID, [REDACTED] stated that the petitioner had occupied temporary spaces at [REDACTED] while construction was ongoing on their new church located at [REDACTED]. Pastor [REDACTED] further stated that the church was unable to keep the building after an economic downturn and moved to more modest spaces at [REDACTED]. Pastor [REDACTED] stated that when the IO visited the premises on "Oct. 4<sup>th</sup> of 07 . . . our church decided to visit[] our member's house and businesses to pray and have services."

The petitioner submitted a copy of a lease that it had executed with [REDACTED] Estate for the premises at [REDACTED] for use as a "general office use for church and church related activities." The undated lease indicates that it was for a period of 39 months and would commence on March 1, 2008. The petitioner also submitted copies of its telephone bills and a power bill for the [REDACTED] location.

On appeal, the petitioner submits a page from the 2005 annual listing of churches associated with the [REDACTED] that shows the petitioning organization (as [REDACTED]) at [REDACTED]. [REDACTED] a copy of a July 11, 2005 letter from the [REDACTED] stating that the petitioner (as [REDACTED]) was affiliated with the [REDACTED] and was "listed on page 7 of the 2004 Directory" and "[t]herefore, they qualify as part of our group tax exemption," and its June 29, 2006 application for a name change showing an address of [REDACTED] Texas. While the latter document indicates an address on [REDACTED], the zip code is [REDACTED] which is that of [REDACTED]. The petitioner also submitted copies of church programs. Although the documents are in Korean and not accompanied by full translations as required by the regulation at 8 C.F.R. § 103.2(b)(3), the documents show the petitioner's address in English at [REDACTED] and 2410 Tarpley Road in Carrollton during 2006 and 2007.

Accordingly, the AAO finds that the petitioner has submitted sufficient documentation to establish that it exists as a religious entity. However, while the AAO finds that the petitioner exists as claimed, the petitioner has not submitted sufficient documentation to establish that the proffered position qualifies as a religious occupation. For the reasons discussed further below, we concur with the director that the petitioner has not established that it has extended a qualifying job offer to the beneficiary.

The petitioner has not established that the proffered position is a religious occupation within the meaning of the regulation at 8 C.F.R. § 204.5(m)(5) defines "religious occupation" as an occupation that meets all of the following requirements:

- (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.
- (B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.

(C) The duties do not include positions that are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible.

(D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

The petitioner submitted no documentation to establish that the duties of the proffered position primarily relate to a traditional religious function within its denomination, that the duties primarily relate to, and clearly involve, inculcating and carrying on the religious creed and belief of the denomination, and that the position is recognized as a religious occupation within the denomination. Additionally, the petitioner has submitted insufficient documentation to establish that the beneficiary will be engaged in full-time religious work as required by the regulation at 8 C.F.R. § 204.5(m)(2). Therefore, the petitioner has failed to establish that it has extended a qualifying job offer to the beneficiary.

Further, beyond the director's decision, the petitioner has failed to meet the requirements of the regulation at 8 C.F.R. § 204.5(m)(7), which requires the petitioner to submit a detailed attestation with details regarding the petitioner, the beneficiary, the job offer, and other aspects of the petition. The record contains no such attestation.

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).

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

**ORDER:** The appeal is dismissed.