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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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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

MAR 09 2011

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:

SELF-REPRESENTED

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

The petitioner submits a letter and 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 issue presented is whether the petitioner has established 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 [Internal Revenue Service] 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.

With the petition, the petitioner submitted a copy of a July 1, 2008 letter from [REDACTED] confirming that it is affiliated with the Convention, an undated letter from the [REDACTED] affirming that the petitioner is associated with that organization, and an undated letter from [REDACTED] the controller for the [REDACTED] [REDACTED] advising the petitioner that it is exempt under section 501(c)(3) under the group

exemption granted to the Convention. The petitioner, however, failed to submit an IRS letter granting tax exempt status to the [REDACTED]

In a request for evidence (RFE) dated January 16, 2009, the director instructed the petitioner to submit, among other evidence, a certificate of exemption from the IRS. While the petitioner submitted other documentation requested in the RFE, it failed to submit documentation to establish that it is a bona fide nonprofit religious organization.

On appeal, the petitioner submits a March 25, 1965 letter from the IRS to the Executive Board of the [REDACTED] granting the organization tax-exemption status for its subordinate units. The petitioner also resubmitted the letter from [REDACTED], the controller for the Missouri Baptist Convention.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. 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. Additionally, the regulation at 8 C.F.R. § 103.2(b)(11) provides that “[a]ll requested materials must be submitted together at one time,” and that “[s]ubmission of only some of the requested evidence will be considered a request for a decision on the record.” The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

At issue here is whether the record before the director established that the petitioner was a tax-exempt organization. As previously indicated, at the time of filing, the petitioner submitted no evidence of a currently valid determination letter from the IRS. The petitioner also failed to submit the documentation in response to the RFE. Accordingly, we find no error on the part of the director in determining that the petitioner failed to establish that it had a valid determination letter from the IRS at the time it filed the petition or at the time it responded to the RFE as required by 8 C.F.R. § 214.2(r)(9). The petitioner must establish eligibility at the time of filing the visa petition. 8 C.F.R. §§ 103.2(b)(1), (12). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

We concur with the director’s determination that the petitioner failed to establish that it is a tax-exempt organization as required by the regulation at 8 C.F.R. § 214.2(r)(9).

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.