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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
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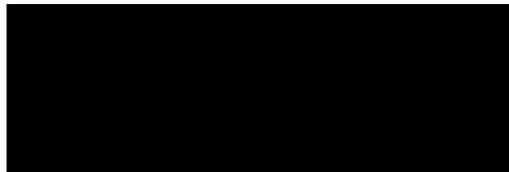
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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 16 2011

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.

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, initially approved the employment-based immigrant visa petition. On further review, the director determined that the petitioner was not eligible for the visa preference classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke (NOIR) the approval of the visa petition and her reasons therefore, and subsequently exercised her discretion to revoke the approval of the petition on August 21, 2009. The petition 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, that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the petition, or that it has the ability to pay the beneficiary the proffered wage.

Counsel asserts on appeal that the petitioner's tax-exempt status was granted by the Government of Guam pursuant to federal statute. Counsel submits a letter and copies of previously submitted documentation in support of the appeal.

Section 205 of the Act, 8 U.S.C. § 1155, states that the Secretary of the Department of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Id.*

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).

On November 26, 2008, the U.S. Citizenship and Immigration Services (USCIS) issued new regulations for special immigrant religious worker petitions. Supplementary information published with the new rule specified that “[a]ll cases pending on the rule’s effective date . . . will be adjudicated under the standards of this rule.” 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). The petition was filed on December 9, 2004 and approved on August 3, 2005. The director revoked approval of the petition on August 21, 2009. We note that the director applied the new rule to the instant case. As the petition was not pending on the effective date of the new rule, the new rule is not applicable. We will therefore adjudicate the petition under the regulations in effect at the time of the initial filing of the petition.

The first issue presented is whether the petitioner has established that it is a bona fide non-profit religious organization.

The regulation at 8 C.F.R. § 204.5(m)(3)(i) that was in effect at the time the petition was filed provided, in pertinent part:

(3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code [IRC] of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service [IRS] to establish eligibility for exemption under § 501(c)(3) of the [IRC] of 1986 as it relates to religious organization.

With the petition, the petitioner submitted a copy of a January 22, 1997 letter from the Department of Revenue and Taxation, Government of Guam, which advised the petitioner that it was “exempt from Gross Receipts Tax under Section 26203(c) of the Business Privilege Tax Law and Income Tax under Section 501(c)(3) of the Guam Territorial Income Tax Law.” [Emphasis omitted.] The petitioner also submitted a January 22, 1997 “Certification of Tax Exemption” from the Guam Department of Revenue and Taxation certifying that the petitioning organization was exempt as a religious organization. The petitioner submitted a copy of IRS Form 1023, Application for Recognition under Section 501(c)(3) of the Internal Revenue Code, that it submitted to the Department of Revenue and Taxation on October 17, 1996. The petitioner did not submit any of the supporting documentation that it filed with the IRS Form 1023.

In his July 14, 2009 letter accompanying the petitioner’s response to the NOIR, counsel stated that “Guam is unique among United States jurisdictions in that it administers federal tax laws through the Guam Department of Revenue & Taxation instead of through the Internal Revenue Service.” Counsel provides a copy of the relevant section of the Organic Act of Guam, section 1421i, which provides that the Governor of Guam “or his delegate shall have the same administrative and enforcement powers . . . as the Secretary of the Treasury” including the provisions of 26 U.S.C. § 501(c)(3). Accordingly, a certification of exemption by the Government of Guam is sufficient documentation to establish that a petitioning organization is exempt from income tax in Guam.

Nonetheless, the record does not establish that the certificate of exemption provided by the petitioner is still valid or was valid at the time the petition was filed. The certificate provides that the “exemption will continue indefinitely unless revoked on the basis of further information obtained by audit or otherwise.” On March 4, 2011, the AAO reviewed the list of non-profit organizations as listed on the Department of Revenue and Taxation website.¹ The petitioning organization is not included in the listing. The AAO also reviewed the IRS online Publication 78. The petitioner is also not included in the IRS listing.²

¹ Accessed on March 4, 2011, a copy of which is incorporated into the record.

² Accessed on March 4, 2011, a copy of which is incorporated into the record.

Accordingly, the petitioner has failed to establish that it is a bona fide nonprofit religious organization.

The second issue is whether the petitioner has established that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition.

The regulation in effect on the date the petition was filed, 8 C.F.R. § 204.5(m)(1), stated, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States.” The regulation indicated that the “religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.”

The relevant regulation at 8 C.F.R. § 204.5(m)(3) stated, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on December 9, 2004. Therefore, the petitioner must establish that the beneficiary was continuously employed as a pastor throughout the two-year period immediately preceding that date.

In its December 7, 2004 letter submitted in support of the petition, the petitioner stated that the beneficiary had been the pastor of [REDACTED] and a missionary to the [REDACTED]. The petitioner also stated that the beneficiary began working for the petitioning organization in September 2003. The petitioner submitted a copy of the minutes of meetings held by the [REDACTED] on March 9, 2002 and January 23, 2003 that identify the beneficiary as one of the officers present, a copy of a January 23, 2003 resolution passed by the [REDACTED] signed by the beneficiary as president, and a copy of a February 25, 2000 lease agreement for the organization signed by the beneficiary as president. The petitioner also submitted a copy of a “bio-data form” which indicates that the beneficiary had worked as a minister [REDACTED] since August 1994.

In an April 11, 2005 request for evidence (RFE), the director instructed the petitioner to:

Provide evidence of the beneficiary's work history beginning DECEMBER 9, 2002 and ending DECEMBER 9, 2004 only. Provide a breakdown of duties performed in the religious occupation for an average week. Include the employer's name, specific job duties, the number of hours worked, [and] remuneration Ideally, this evidence should come in a way that shows monetary payment, such as W-2 forms, pay stubs, or other items showing the beneficiary received payment. Documentation showing the withholding of taxes is good evidence. However, you may also show payment through other forms of remuneration. If any work was on a volunteer basis, provide evidence to show how the beneficiary supported him or herself (and family members, if any) during the two-year period or what other activity the beneficiary was involved in that would show support.

In response, the petitioner submitted a June 28, 2005 letter from [REDACTED] in which its senior pastor, [REDACTED], stated that the beneficiary had been its missionary to Saipan since 1992 and that:

He has been fully supported by the church. His last drawn pay was S\$4,000 per month in June 2004.

From July 2004 we have continued to support him by "love gifts" – as received from members of our congregation. The total sum remitted to [the beneficiary] is S\$25,141-00 up to end of April 2005.

The petitioner submitted copies of processed checks indicating that it paid the beneficiary either a salary or "living support" in lieu of salary from August 2003 through December 2004. The petitioner also indicated that it provided the beneficiary a parsonage for which it paid \$1,000 per month. However, the petitioner submitted no documentation indicating that it paid for a parsonage after May 2004. The petitioner submitted no documentation such as pay vouchers or similar documentation to establish that the beneficiary received any payments from Calvary Bible – Presbyterian Church.

In her NOIR of June 22, 2009, the director again instructed the petitioner to submit documentation to establish the beneficiary's qualifying work experience. In response, the petitioner submitted documentation of payments that it made to the beneficiary from 2005 through 2009; however it submitted no additional documentation to establish that the beneficiary worked in a religious occupation during the qualifying period from December 9, 2002 to December 9, 2004. The petitioner did not address this issue on appeal. Accordingly, the petitioner has failed to establish that the beneficiary worked continuously as a minister for two full years immediately preceding the filing of the petition.

The third issue presented is whether the petitioner has established that it has the ability to pay the proffered wage.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner stated in its letter of December 7, 2004 that it would pay the beneficiary a monthly salary of \$2,000 per month and that he would receive a parsonage allowance of \$1,200 per month. The petitioner submitted no documentation of its ability to pay the beneficiary the proffered wage with the petition. In response to the director's RFE, the petitioner submitted copies of its IRS Form 990-EZ, Short Form Return of Organization Exempt from Income Tax, for the year 2003 and 2004 on which it indicated that it paid the beneficiary \$13,916 and \$31,447, respectively. The petitioner also reported net assets of \$36,225.45 and \$38,443.26 in 2003 and 2004.

In response to the NOIR, the petitioner submitted copies of IRS Form 990-EZ for the years 2006 through 2008 and copies of processed checks indicating that it paid the beneficiary \$2,500 per month from January 2006 to August 2008 and \$3,000 per month thereafter. The petitioner reported on its IRS Forms 990-EZ that it had net assets of \$21,644.44, \$27,810.14, and \$36,142.09, in 2006, 2007 and 2009, respectively. The petitioner has submitted sufficient documentation to establish that it has the ability to pay the beneficiary the proffered wage and we withdraw this determination by the director.

Nonetheless, as the petitioner has failed to establish that it is a bona fide nonprofit religious organization or that the beneficiary worked continuously as a minister for the two years immediately preceding the filing of the petition, the petition cannot be approved.

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.