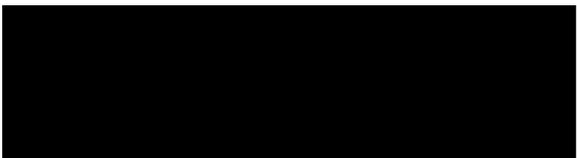




U.S. Citizenship
and Immigration
Services

identifying info deleted to
protect identity and prevent
invasion of personal privacy
PUBLIC COPY

C1



DATE: **APR 10 2012** 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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. A subsequent motion to reopen was also denied by the director. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, the AAO will remand the petition for further consideration and action pursuant to new regulations.

The petitioner is a mosque. 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 imam. The director determined that the petitioner had not established that it qualifies as a nonprofit organization.

The petition was filed on May 19, 2008. At the time of filing, the regulation at 8 C.F.R § 204.5(m)(3)(i) required that the petitioner submit the following:

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 section 501(c)(3) of the Internal Revenue Code 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 to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations;...

Among the evidence submitted in support of the petition, the petitioner submitted a copy of a letter from the IRS, dated February 20, 2007, acknowledging receipt of the petitioner's Form 1023 application for exemption from federal income tax under section 501(c)(3). The petitioner also submitted a full copy of its Form 1023 application with all supporting attachments, including the Schedule A supplement that applies to churches and a copy of the petitioner's bylaws.

On May 29, 2008, the director issued a Request for Evidence which, in part, stated:

The IRS letter submitted is not sufficient evidence of the petitioner's non-profit status for the purposes of the current immigration petition. Provide evidence that the U.S. religious organization qualifies as a nonprofit religious organization in the form of either:

(a) The Internal Revenue Service – IRS 501(c)(3) Tax Exempt Certification;
or

(b) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

If you choose option (b) the documentation should include, at a minimum, a completed IRS Form 1023, the Schedule A supplement that applies to churches, and a copy of the organizing instrument of the church that contains a proper dissolution clause and that specifies the purpose of the organization.

In response to this request, the petitioner resubmitted a copy of the Form 1023 along with the appropriate Schedule A supplement and a copy of the bylaws specifying the purpose of the organization and containing the dissolution clause. In a cover letter, counsel for the petitioner noted that this evidence had already been submitted with the Form I-360 petition.

On September 30, 2008, the petition was denied solely on the issue of the petitioner's tax-exempt status. In the decision, the director incorrectly stated that the petitioner "did not submit a copy of the petitioner's organizing instrument and the Form 1023 Schedule A Supplement that applies to churches." On October 31, 2008, the petitioner filed a Form I-290B Motion to Reopen and submitted a copy of a letter from the IRS, dated October 24, 2008, confirming that the petitioner was granted tax-exempt status under section 501(c)(3). The director denied the motion on December 16, 2008.

We find that the director erred in denying the Form I-360 petition and the subsequent motion. The documents submitted with the petition and resubmitted in response to the Request for Evidence met the requirements for showing eligibility for tax-exempt status as stated in 8 C.F.R. § 204.5(m)(3)(i)(B). Furthermore, the October 24, 2008 approval letter from the IRS confirms that the petitioner's Form 1023 application and supporting materials were sufficient to establish its eligibility for such status. We therefore find that the petitioner established its status as a nonprofit organization. We also find, however, that the petition cannot yet be approved in its current state.

On November 26, 2008, 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) published 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 (Nov. 26, 2008). The motion to reopen the petition was pending on November 26, 2008, and therefore the new regulations apply to the petition. The director must make the initial determination as to whether or not the petitioner has met the new regulatory requirements.

The director must issue a new decision based on the new regulations promulgated on November 26, 2008. Because the new regulations include substantial new evidentiary requirements, the director must also afford the petitioner an opportunity to submit all such evidence that the petitioner did not initially submit, or that the director has not previously requested. 8 C.F.R. § 103.2(b)(8). As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The matter is remanded to the director, California Service Center, for the issuance of a request for evidence (if necessary) and a new decision in accordance with the requirements of the new regulation published at 73 Fed. Reg. 72276 (Nov. 26, 2008). If the new decision is adverse to the petitioner, it shall be certified to the Administrative Appeals Office for review.