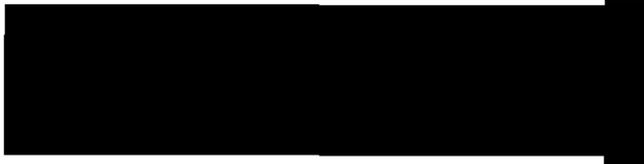


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

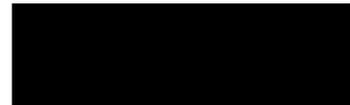


U.S. Citizenship  
and Immigration  
Services



C,

Date: JUL 24 2012 Office: CALIFORNIA SERVICE CENTER



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:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

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 chairman of deacon body/benevolence. The director determined that the petitioner failed to establish that it qualifies as a bona fide non-profit religious organization in the United States.

The petitioner submits no further evidence on 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 United States Citizenship and Immigration Service (USCIS) regulation at 8 C.F.R. § 204.5(m)(3) provides that in order to be eligible for classification as a special immigrant religious worker, an alien must be coming to work for a bona fide non-profit religious organization in the United States, or a bona fide organization which is affiliated with the religious denomination in the United States. The regulation at 8 C.F.R. § 204.5(m)(5) states, in pertinent part:

(5) Definitions. As used in paragraph (m) of this section, the term:

*Bona fide non-profit religious organization in the United States* means a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the IRS confirming such exemption.

*Bona fide organization which is affiliated with the religious denomination* means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code and possessing a currently valid determination letter from the IRS confirming such exemption.

The regulation at 8 C.F.R. § 204.5(m)(8) states:

*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 of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, 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.

The petitioner filed the Form I-360 petition on September 7, 2011. In a letter dated May 18, 2011, accompanying the petition, the petitioner stated:

This letter is to certify that OUR FATHER'S HOUSE SATELLITE BEACH INC. is a non-profit religious organization identified with Federal Tax ID [REDACTED] under the 501(c)(3) guidelines of the Internal Revenue Code.

As a nonprofit religious organization operating in the State of Florida we hold certificate number [REDACTED] with the Florida Department of Revenue. (Certificate attached)

The petitioner also submitted a copy of a certificate from the Florida Department of Revenue confirming the petitioner's exemption from Florida sales and use tax.

On October 20, 2011, USCIS issued a Request for Evidence which, in part, instructed the petitioner to submit documentary evidence that it qualifies as a non-profit organization in accordance with 8 C.F.R. § 204.5(m)(8). The notice specifically instructed the petitioner to submit a determination letter from the IRS indicating the petitioner's Employer Identification Number (EIN) and confirming that it is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code.

In response, the petitioner resubmitted a copy of its May 18, 2011, letter asserting its tax-exempt status "under the 501(c)(3) guidelines," as well as a copy of the Florida state tax exemption certificate. Additionally, the petitioner submitted an excerpt from an IRS publication, with the following portion highlighted:

**Automatic Exemption for Churches**

Churches that meet the requirements of IRC section 501(c)(3) are automatically considered tax exempt and are not required to apply for and obtain recognition of tax-exempt status from the IRS.

The director denied the petition on December 19, 2011, noting that the petitioner was requested to provide a currently valid determination letter from the IRS confirming its exemption from taxation as described in section 501(c)(3) of the Internal Revenue Code but failed to provide such evidence. The director therefore found that the petitioner had not established that it qualifies as a bona fide nonprofit religious organization in the United States.

On appeal, the petitioner states the following:

As the petitioner, we have always been recognized as a “bona fide non-profit religious organization.” This fact is indisputable and noted clearly since our initial corporate filing through the Florida Department of State, Division of Corporations in 1962. The IRS has recognized our organization as a “bona fide non-profit religious organization” since our E.I.N. was issued almost 50 years ago.

Somehow in filing our I-360 with your department, we missed the full language requiring us to prove our “bona fide non-profit religious organization” by means of the actual determination letter from the IRS identifying us as a 501(c)(3).

Since receiving the denial of our petition in the mail on December 23, 2011, we have immediately begun the lengthy process to obtain said determination letter. We are requesting time to submit this evidence for your reconsideration of our petition.

In a letter accompanying the I-290B, Notice of Appeal, the petitioner indicated that it has “begun to prepare all the documentation required for us to complete IRS Form 1023 which is our request for the 501(c)(3) determination letter to be in compliance with your new immigration policy as stated in 8 C.F.R. 204.5(m)(5).”

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 the petition was filed, the petitioner submitted no evidence of a currently valid determination letter from the IRS. In response to the RFE, the petitioner again failed to submit qualifying documentation of its federal tax-exempt status. 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. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm’r. 1971). Although the petitioner asserts that it is now in the process of applying for a determination letter, the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated.

To the extent that the petitioner argues that it qualifies as a bona fide religious organization without a valid determination letter, the AAO disagrees. In the preamble to the final regulations, USCIS acknowledged that the IRS does not require all churches to apply for a determination letter, but stated that the requirement is included in the final rule because it is a “valuable fraud deterrent” and an IRS determination letter provides “verifiable documentation that the petitioner is a bona fide tax-exempt organization or part of a group exemption.” *See* 73 Fed. Reg. 72280, 72281 (Nov. 26, 2008).

Accordingly, the AAO finds 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 and therefore that the petitioner failed to establish that it qualified as a bona fide nonprofit religious organization at the time of filing.

As an additional matter, the AAO finds that the petitioner has not established that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition. The USCIS regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the alien has been working as a minister or in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously for at least the two-year period immediately preceding the filing of the petition. Therefore, petitioner alien must establish that the beneficiary was continuously performing qualifying religious work in lawful status throughout the two-year period immediately preceding September 7, 2011.

The USCIS regulation at 8 C.F.R. § 204.5(m)(11) provides:

*Evidence relating to the alien's prior employment.* Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work, must have occurred after the age of 14, and if acquired in the United States, must have been authorized under United States immigration law. If the alien was employed in the United States during the two years immediately preceding the filing of the application and:

- (i) Received salaried compensation, the petitioner must submit IRS documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of income tax returns.
- (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.
- (iii) Received no salary but provided for his or her own support, and provided support for any dependents, the petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS.

If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

According to the evidence submitted by the petitioner at the time of filing the Form I-360 petition and in response to the October 20, 2011 Request for Evidence, the beneficiary held B-2 nonimmigrant status at the time of filing and for much of the two-year qualifying period immediately preceding the filing of the petition. The regulation at 8 C.F.R. § 214.1(e) states that

aliens in such status “may not engage in any employment.” Service records do not indicate that the beneficiary held any lawful status in the United States that would have authorized him to work for the petitioner during the qualifying two-year period. Accordingly, any work performed by the beneficiary in the United States during the qualifying period is not considered qualifying prior experience under 8 C.F.R. § 204.5(m)(11).

In letters accompanying the petition, the petitioner asserted that the beneficiary had served as a religious worker for the petitioning church since February 2005. The petitioner submitted a letter from the beneficiary, in which he stated that he had “received no salary from the petitioner” and that he had provided his own support through the investment of savings. The petitioner provided copies of the beneficiary’s bank statements as well as evidence of his ownership of his house and car. In response to the Request for Evidence, the petitioner asserted its need to “rely on non-paid religious workers” and again submitted evidence regarding the beneficiary’s ability to provide his own support.

The current regulation at 8 C.F.R. § 204.5(m)(11) requires the beneficiary’s religious work during the qualifying period to have been compensated employment. The petitioner must submit evidence of prior compensation in the form of IRS documentation, or evidence of qualifying self-support. Permissible circumstances for self-support, outlined in the USCIS regulations at 8 C.F.R. § 214.2(r)(11)(ii), involve the beneficiary’s participation in an established program for temporary, uncompensated missionary work. The petitioner has not shown or claimed that the beneficiary participated in such a program.

Regarding the petitioner’s claim that the beneficiary’s volunteer work within the United States is qualifying experience, any work performed by the beneficiary as a volunteer is not qualifying. In the preamble to the proposed rule, USCIS recognized that although “legitimate religious work is sometimes performed on a voluntary basis . . . allowing such work to be the basis for . . . special immigrant religious worker classification opens the door to an unacceptable amount of fraud and increased risk to the integrity of the program.” *See* 72 Fed. Reg. 20442, 20446 (April 25, 2007). Accordingly, any time the beneficiary may have spent in the United States “working” as a volunteer for the petitioner cannot be considered qualifying employment.

For the reasons discussed above, the AAO finds that the petitioner has not established that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition.

Furthermore, the AAO finds that the petitioner has not established that the beneficiary will work in a compensated position. The USCIS regulation at 8 C.F.R. § 204.5(m)(2) provides that in order to be eligible for classification as a special immigrant religious worker, an alien must:

- (2) Be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position in one of the following occupations as they are defined in paragraph (m)(5) of this section:

- (i) Solely in the vocation of a minister of that religious denomination;
- (ii) A religious vocation either in a professional or nonprofessional capacity; or
- (iii) A religious occupation either in a professional or nonprofessional capacity.

On the Form I-360 petition, the petitioner provided the following description of the proposed compensation for the proffered position: “non-salaried, Ø compensation.” In a letter accompanying the petition, the beneficiary stated that his family’s expenses “have been and will continue to” be met by investment of the beneficiary’s life savings. In its response to the October 20, 2011 Request for Evidence, the petitioner again indicated that the beneficiary’s position would be unpaid. Accordingly, the petitioner has not established that the beneficiary will be working in a compensated position as required under 8 C.F.R. § 204.5(m)(2).

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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.