



U.S. Citizenship  
and Immigration  
Services

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DATE: JUN 18 2012 OFFICE: CALIFORNIA SERVICE CENTER

FILE: [Redacted]

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, (“the director”) denied the employment-based immigrant visa petition. The petitioner timely filed an appeal to the denied 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 a minister and missionary. On September 19, 2011 the petitioner filed a Form I-360 petition. On October 20, 2011, the director issued a Request For Evidence (“RFE”), to which the petitioner timely responded. On July 19, 2011, the director denied the petition, finding that the petitioner had not established that its organization qualified as a bona fide nonprofit religious organization.

On appeal, the petitioner submits an affidavit and further documentation.

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 is whether the petitioner qualified as a bona fide non-profit religious organization at the time of filing the petition. The regulation at 8 C.F.R. § 204.5(m)(1) states that:

(m) *Religious workers.* This paragraph governs classification of an alien as a special immigrant religious worker as defined in section 101(a)(27)(C) of the Act and under section 203(b)(4) of the Act. To be eligible for classification as a special immigrant religious worker, the alien (either abroad or in the United States) must:

- (1) For at least the two years immediately preceding the filing of the petition have been a member of a religious denomination that has a bona fide non-profit religious organization in the United States.

The regulation at 8 C.F.R. § 204.5(m)(5) further states:

*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) further 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 Form I-360 petition was filed on September 19, 2011. At filing, the petitioner submitted a Consumer's Certificate of Exemption from the State of Florida. However, the petitioner did not submit an Internal Revenue Service ("IRS") letter showing that it is a bona fide tax exempt religious organization or evidence that it is recognized as tax exempt under a group tax-exemption, as is required by the regulation above.

In the October 20, 2011 RFE, the director asked that the petitioner:

**Nonprofit Religious Organization:** Provide evidence that the U.S. religious organization qualifies as a nonprofit religious organization in the form of the Internal Revenue Service – IRS 501(c)(3) Tax Exempt Certification.

NOTE: The IRS determination letter for 501(c)(3) exemption must indicate the petitioner's IRS Employer Identification Number.

NOTE: The evidence submitted shows the petitioner is exempt State income tax. You must provide evidence that shows the petitioner is exempt Federal income tax.

The petitioner failed to provide the requested IRS determination letter. Instead, in the December 27, 2011 response to the RFE, the petitioner submitted:

1) A letter dated November 4, 2011, stating that:

Evidence requested includes:

1. That we provide our 501(c)(3) letter from the IRS indicating our IRS Employer Identification Number. An application has been made which is pending approval. See Exhibit 1.

- 2) An IRS Form 1023, Application for Recognition of Exemption Under 501(c)(3) of the Internal Revenue Code, checklist which contains an IRS stamp showing that this document was received with remittance on December 19, 2011.
- 3) A letter from the IRS dated November 14, 2011, which shows the petitioner's employer identification number.

None of this evidence establishes that IRS had determined that the petitioner was a 501(c)(3) tax-exempt organization. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the benefit request. 8 C.F.R. § 103.2(b)(14). On this basis alone, the petition may not be approved.

On February 13, 2012, the director denied the petition. In the denial, the director stated:

On October 20, 2011, the petitioner was requested to provide a valid determination letter from the Internal Revenue Service (IRS). On December 27, 2011 the petitioner responded to the request for evidence, however, they did not submit a valid IRS determination letter. The petitioner instead writes, "an application has been made which is pending approval see exhibit 1." Exhibit 1, Form 1023 Checklist, indicates that application was made on December 19, 2011.

Therefore, the evidence is insufficient to establish that the employer qualifies as bona fide religious organization.

On appeal, the petitioner submits an affidavit in which it states:

3. Petitioner, is therefore pleased to submit herewith an Internal Revenue Federal Group Exemption No. [REDACTED] Determination Letter dated June 3, 2003 issued under Federal Income Tax Section [REDACTED] © (3) [sic] of the IRS code to [REDACTED] and an official letter dated February 27, 2012 from the [REDACTED] which named the petitioner, [REDACTED] as a subordinate affiliated church which is recognized as tax exempt under Federal Income Tax Under section 501 © (3) [sic] of the IRS code, which we trust have met the requirement as requested under the letter of denial.

Submitted herewith, please find copy of Determination letter from IRS dated June 3, 2003 issued to [REDACTED] and a copy of Letter dated February 27, 2012 from [REDACTED]

4. That the above Determination letter from the Internal Revenue Service stated that [REDACTED] and its subordinate church are recognized as tax exempt from Federal Income Tax under section 501 © (3) [sic] of the IRS code. The letter from [REDACTED] stated that the petitioner, [REDACTED]

██████████ is recognized and accepted as a subordinate church affiliation and specifically stated that this same letter is issued in lieu of the Determination Letter normally issued by the Internal Revenue Service.

To support this, the petitioner submits a June 3, 2003 letter from the IRS indicating that the ██████████ is a 501(c)(3) tax-exempt organization. The petitioner also submits a February 27, 2012 letter from ██████████ which states that after review of the petitioner's "creative documents and . . . proposed operations," the petitioner "has been accepted as a subordinate member of this fellowship" and now falls under ██████████ group tax exemption.

At the time of filing the petition, the petitioner was not affiliated with ██████████. Specifically, in a letter dated September 6, 2011, the petitioner stated:

The church has not been affiliated with any denomination but has developed a fellowship which embraces all ministries, churches, individuals and other organizations that acknowledges and accepts Jesus Christ as Savior and Lord.

Only in response to the denial decision has the petitioner submitted evidence of its recent recognition and affiliation with a 501(c)(3) tax-exempt organization. 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. 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'r 1988). Moreover, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

In the alternate, the petitioner states that it is in the process of obtaining separate recognition of its tax-exempt status from the IRS:

7. That during the process of the application I-360 the church did realize that the sponsoring petition would require a Tax Exempt Determination letter from IRS under 501 © (3) [sic] of the IRS Code and as such this church caused to be made an application on December 19, 2011 to the IRS Department which said application is in process. A copy of this letter which stated that the filing fees were paid and was stamped as received by the IRS from their State Local Office was already submitted to the Immigration Office. We believe that our application would be granted within the month or so because we have submitted all the necessary information plus the necessary filing fees and in following up the matter we were told that a determination letter would be sent out shortly.

It is not sufficient for the petitioner to show that it is in the process of obtaining an IRS letter regarding its own 501(c)(3) tax-exempt status. A visa petition may not be approved based on speculation of future eligibility or after the petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971).

Finally, the petitioner suggests:

5. That further to the immigration denial letter which stated among other things, that "the evidence is insufficient to establish that the employer qualifies as bona fide religious organization." The immigration office failed and or neglected to take into consideration that [REDACTED] is a legal corporation organized and incorporated under the Religious Corporation laws of the State of Florida since May 6, 2004 with a corporation number as No 4000000 4532. And that the Secretary of State has declared that the church corporation has paid all fees and its status is active. Submit herewith [sic]; please find copy [sic] of this certificate issued from the Secretary of State.

6. We submit and state categorically that the State Department of Florida has declared and certified that the church is a bona fide corporation and not an individual but a body of believers carrying on church and religious activities under its registered corporate Bylaws and Constitution adopted by the said church as an entity.

Therefore, it is difficult to understand why the immigration office has ignored these outstanding facts on behalf of the church which has its Bylaws, Church Offices, and Members congregation and is still active and therefore it is not correct for the immigration officer to conclude that the church is not a bona fide organization.

A state determination letter and a certificate showing that the petitioner is in good standing with the State of Florida are insufficient. The regulations require that in order for the petitioner to establish that it is a bona fide non-profit religious organization in the United States, the petitioner must either show that the IRS recognizes it as a 501(c)(3) organization, or that the petitioner falls under a group exemption. In all cases, a petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(14).

Based on the above information, the petitioner has failed to submit evidence establishing that petitioner was a bona fide non-profit religious organization or that the petitioner was a member of a bona fide non-profit religious organization at the time of filing the petition. On this basis alone, the petition may not be approved.

The following additional issues preclude approval of the petition: (1) the petitioner failed to establish that the beneficiary was continuously working in lawful status for the two-year period immediately preceding the filing of the petition; (2) the petitioner did not submit sufficient proof of its ability to compensate the beneficiary; and (3) the petitioner failed to establish that the beneficiary belonged to

the petitioner's denomination for the two years preceding the filing of the petition. 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 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The regulations at 8 C.F.R. §§ 204.5(m)(4) and (m)(11) require that the beneficiary work continuously in lawful status for the two-year period immediately preceding the filing of the petition. The petition was filed on September 19, 2011. Therefore, the beneficiary must have been continuously working in lawful status from September 19, 2009 until September 19, 2011. The petitioner submitted a letter from the [REDACTED] which stated that the beneficiary worked there from February 1989 until April 2010 and earned a salary of 150,000 CFA Francs. However, the petitioner did not submit the [REDACTED] equivalent of an IRS Form W-2 or certified copies of income tax return, which is required by the regulation at 8 C.F.R. § 204.5(m)(11). Further, the record shows that the beneficiary entered the United States on April 7, 2010, as a B-1 nonimmigrant Temporary Business Visitor, extended his status, and did not depart the country after his status expired on March 20, 2011. The petitioner submitted a letter from [REDACTED] which stated that the beneficiary worked there from May 2010 to July 2011. The USCIS regulation at 8 C.F.R. § 214.1(e) states that any nonimmigrant may not engage in any employment unless he has been granted permission to work and that any unauthorized employment by a nonimmigrant constitutes a failure to maintain status. Because the beneficiary engaged in unauthorized employment and remained and worked in the United States after his nonimmigrant status expired, the beneficiary was not continuously working in lawful status from the time he entered the country up through the filing of the petition, which is required by the regulation above. For this additional reason, the petition may not be approved.

The regulation at 8 C.F.R. § 204.5(m)(10) requires the petitioner to submit proof of its ability to compensate the beneficiary. In a letter dated September 6, 2011, the petitioner stated that the beneficiary was to be paid a weekly salary of \$300.00. However, the record contains no IRS Forms W-2 or IRS Forms 1099-MISC showing that the petitioner previously compensated the beneficiary, and the record contains no evidence showing that the beneficiary worked for the petitioner. Therefore, the petitioner has not established past compensation through payment of the beneficiary's salary.

As the petitioner is unable to show its ability to compensate through past compensation of the beneficiary, the AAO will next look at the petitioner's financial documentation to determine whether it has the ability to compensate the beneficiary. The petitioner submitted profit and loss comparison statements from 2008 to 2010. As there is no accountant's report accompanying these statements, the AAO cannot conclude that they are audited statements. Unaudited financial statements are the representations of management. The unsupported representations of management are not reliable evidence and are insufficient to demonstrate the petitioner's ability to compensate the beneficiary. Further, the bank statements that the petitioner submitted with the RFE are not sufficient to show the

ability to compensate. Bank statements show the amount in an account on a given date, and cannot show the sustainable ability to compensate the beneficiary. The bank statements submitted by the petitioner also do not list the petitioner's name on the account, nor do they directly show that the petitioner paid the beneficiary. Therefore, the petitioner has not shown the ability to compensate the beneficiary. For this additional reason, the petition may not be approved.

The petitioner did not submit sufficient evidence to show that the beneficiary was part of the same valid religious denomination as the petitioner for the two years preceding the filing of the petition, pursuant to 8 C.F.R. § 204.5(m)(1) and (m)(5). For the two years immediately preceding the filing of the petition, the beneficiary worked for the [REDACTED] and for the [REDACTED]. The petitioner did not establish that these churches share a denomination with the petitioner. There is no other evidence to establish that the beneficiary was part of the denomination for the two-year period preceding the filing. For this additional reason, the petition may not 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.

**ORDER:** The appeal is dismissed