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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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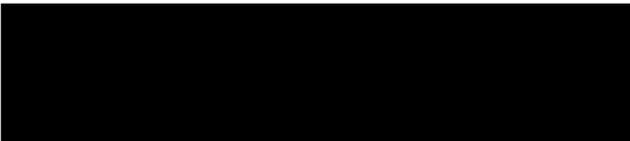
DATE: **MAY 02 2012** OFFICE: CALIFORNIA SERVICE CENTER

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.

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, (“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 an associate pastor and an evangelist. On August 6, 2007 the petitioner filed a Form I-360 petition. On March 28, 2008, the matter was initially denied for failure to respond to a Request For Evidence and was considered abandoned. On June 18, 2008, the matter was reopened. On May 13, 2009, director issued a Notice of Intent to Deny, to which the petitioner timely responded. On October 4, 2010, the director denied the petition, finding that the petitioner had not established that its organization qualified as a bona fide nonprofit religious organization at the time of filing. The director also denied the petition because she found that the petitioner failed a site verification inspection.

On appeal, the petitioner submits an argument on the Form I-290B.

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 first issue is whether the petitioner qualified as a bona fide non-profit religious organization at the time of filing the petition. 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:

(8) 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 August 6, 2007. At filing, the petitioner submitted an IRS letter dated July 27, 2001 indicating that the [REDACTED] was considered tax exempt under Section 501(c)(3) of the Internal Revenue Code. According to the regulations above, the petitioner must show that it is a member of a bona fide non-profit religious organization. However, the petitioner has not submitted any IRS letters showing that it is a bona fide tax exempt religious organization, as is required by the regulation above. The petitioner also submitted an undated certificate showing that [REDACTED] and the petitioner were affiliate members at one point. However, as the director stated in his denial decision:

In addition, it should be noted that a third site visit was conducted on May 10, 2010 by an Immigration Officer from the Baltimore District Office which again resulted in a failed finding. During a telephone interview on April 14, 2010, the signatory [REDACTED] stated that he has severed ties with the parent organization, [REDACTED] due to internal disagreement regarding the oversight/control of the parent organization.

Therefore, the director found that the two organizations are no longer affiliated. Because the affiliation letter is undated, it is unclear to the AAO whether the two organizations were affiliated at the time of

the filing of the petition.

On appeal, the petitioner has not submitted any evidence rebutting the director's statement or even showing that the two organizations were affiliated at the time of filing the petition. Rather, the petitioner only stated:

Petitioner contends that the US Department of Homeland Security had been receiving, without questioning petitions and documents / evidence from their institution without questioning their authenticity as a Church or Religious Organization without an independent 501(c)(3) status, while they operated as a church within the Association of Churches known as [REDACTED]. However, since receiving the denial from USCIS, the Petitioner has started the process of acquiring an independent 501(c)(3) status of its own. Proof of this will be submitted to USCIS once a copy of the Certificate or other documentary Evidence of its pending status are received from the IRS.

As a result of the Petitioner's detrimental reliance on the former actions of USCIS in not negatively questioning their petitions, the denial of this I-360 Petition is grossly unfair.

The petitioner did not challenge the directors finding, but rather stated that it was in the process of obtaining its own 501(c)(3) status. However, a petitioner must establish the elements for the approval of the petition at the time of filing. A petition may not be approved if the beneficiary was not qualified at the priority date, but expects to become eligible at a subsequent time. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). Therefore, the petitioner has not established that it was a bona fide non-profit religious organization at the time of filing the petition. For this reason, the appeal will be dismissed.

The director also denied the Form I-360 petition because she found that the petitioner failed a site verification inspection, as required by 8 C.F.R. § 204.5(m)(12). On appeal, the petitioner does not specifically contest the director's findings for this issue or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); see also *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (claims were abandoned when the petitioner failed to raise them on appeal to the AAO).

The evidence submitted does not establish that petitioner was a bona fide non-profit religious organization at the time of filing the petition and that the petitioner overcame a negative site inspection. Therefore, the appeal will be dismissed.

Beyond the directors' decision, the AAO also finds that petitioner failed to establish its ability to compensate the beneficiary, and that the petitioner failed to submit an attestation clause. 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 regulation at 8 C.F.R. § 204.5(m)(10) requires that the petitioner submit verifiable evidence of how the petitioner intends to compensate the alien. In an undated letter, the petitioner stated that it would pay the beneficiary \$54,000 per year. However, the petitioner submitted no financial information that clearly shows that it has the ability to compensate the beneficiary. The petitioner submitted the beneficiary's Forms 1099-MISC from 2005 to 2007, showing that the petitioner paid the beneficiary \$4,549 in 2005, \$15,634 in 2006, and \$29,223 in 2007. However, on the beneficiary's certified tax returns submitted by the petitioner, the beneficiary stated that he earned \$4,549 in 2005, \$5,624 in 2006 and \$15,970 in 2007. The beneficiary stated in his Form G-325A, submitted in conjunction with his I-485 Application to Register Permanent Residence or Adjust Status that he worked for the petitioner since August of 2005, and did not list any other employers. Despite the inconsistency in the beneficiary's salary during the two years immediately prior to the filing of the petition, neither one is close to the proffered salary that the petitioner stated that it would pay the beneficiary. Therefore, the AAO finds that the petitioner has not shown that it has the ability to compensate the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(7) also requires that an authorized official of the prospective employer of an alien seeking religious worker status must complete, sign and date an attestation prescribed by USCIS and submit it along with the petition. The AAO notes that while there is a letter in the record from the petitioner that contains some of the information that one would find in the attestation clause, there is no actual attestation clause that is signed and dated. Due to the lack of an attestation clause, the AAO will dismiss the appeal on this basis as well.

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