

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



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Date: **NOV 15 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:

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 director of the ministry of families. The director determined that the petitioner failed to establish that it qualifies as a bona fide non-profit religious organization in the United States.

On appeal, the petitioner submits a brief from [REDACTED]

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

¹ Only an affected party, a person, or entity with legal standing may file an appeal of an unfavorable decision. 8 C.F.R. § 103.3(a)(2)(v)(A)(I). [REDACTED] signed the Form I-290B. However, [REDACTED] did not submit a properly executed, dated Form G-28 with the appeal authorizing him to act on behalf of the petitioner as required by the instructions for the Form I-290B and G-28 as well as the regulation at 8 C.F.R. § 292.4(a). By fax of July 17, 2012, the AAO requested that [REDACTED] submit a Form G-28 within 15 calendar days. [REDACTED] failed to respond to the AAO's request. Instead, [REDACTED] responded via fax on August 8, 2012, stating that she was the new legal representative for the petitioner and submitting a new Form G-28, dated August 8, 2012, authorizing her to appear on the petitioner's behalf. Without further documentation showing that [REDACTED] was indeed authorized to represent the petitioner on appeal, the appeal could alternately be rejected for lack of standing.

(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 April 25, 2011. In a letter accompanying the petition, the petitioner stated:

Our Church is incorporated as the [REDACTED] We have a non-profit status as a religious institution.

Evidence of our tax-exempt status as a church [REDACTED] is attached.

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

On July 28, 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 an "IRS 501(c)(3) Tax Exempt Certification" letter which indicates the petitioner's IRS Employer Identification Number (EIN).

In response, the petitioner submitted a letter from a [REDACTED] [REDACTED] stated that, under IRS guidelines, the petitioning church is automatically qualified as an exempt organization under Section 501(c)(3) and is not required to apply for recognition of such exemption. [REDACTED] further stated that the petitioner sent the required documentation to the IRS to prove its status as a church without applying for formal recognition of exemption. The petitioner also submitted copies of IRS guidelines relating to churches and resubmitted evidence of its exemption from taxation in the state of Florida.

The director denied the petition on November 8, 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, [REDACTED] acknowledges that the petitioner did not have a certification of its tax exempt status under 501(c)(3) status at the time of filing. He asserts that the petitioner did not realize it needed to provide a valid determination letter because it had always operated as an *automatically exempt organization in compliance with the Internal Revenue Code*. [REDACTED] argues that the petitioner “should not be required to provide such certification.” Alternately, [REDACTED] asserts that the petitioner has now applied for formal recognition of its tax exempt status and should be allowed an opportunity “to submit the required documents without the need to re-file a new application before the service.”

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.

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.