



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: JUN 04 2013

Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

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,

Ron Rosenberg
Acting 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 Buddhist Temple. 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 monk. 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 copies of two letters from the Internal Revenue Service (IRS) to the petitioning temple.

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 June 20, 2012. Accompanying the petition, the petitioner submitted copies of its Bylaws, Articles of Incorporation, and evidence relating to its status as a non-profit corporation in the state of Washington.

On October 26, 2012, USCIS issued a Request for Evidence (RFE) 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 confirming that it is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code.

In a letter responding to the request, the petitioner referred to the petitioning organization as “a non-profit corporation under the laws of the State of Washington.” The petitioner also submitted additional documentation regarding its non-profit status under state law.

The director denied the petition on January 23, 2013, noting that the petitioner was specifically 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 submits an October 27, 1986 determination letter from the IRS addressed to the petitioner at “[redacted] Seattle, WA [redacted]” and listing the petitioner’s Employer Identification Number (EIN) as [redacted]. The petitioner additionally submits a February 14, 2013 letter from the IRS addressed to the petitioner at its current address confirming that its EIN number is [redacted].

At issue on appeal is whether the director erred based upon the record that was him. 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). 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. The petitioner failed to submit the requested evidence and now submits it on appeal. The AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

The AAO finds no error on the part of the director in determining that the petitioner failed to establish that it qualifies as a bona fide nonprofit religious organization.

As an additional matter, the AAO finds inconsistencies in the record which call into question the reliability of the petitioner's evidence. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

On the Form I-360 petition, the petitioner described the beneficiary's qualifications for the proffered position as follows: "The alien has become a monk since 2006, has lots of experiences of services for the members of the temple." In a letter accompanying the petition, the beneficiary stated: "I was enter to priesthood in January 14th 2006." The petitioner submitted a translated copy of the beneficiary's "Monk/Novice Identification Booklet," dated February 8, 2005, which stated that the beneficiary entered "Monkhood" on January 14, 2005.

In a letter responding to the October 26, 2012 RFE, the petitioner stated that the beneficiary was "originally ordained on 01/14/2005." A separate statement from the beneficiary stated that he entered the monkhood "since 2/8/2005 to present." No explanation was provided regarding the discrepancies between the dates provided by the petitioner and beneficiary in response to the RFE and those provided at the time of filing.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.