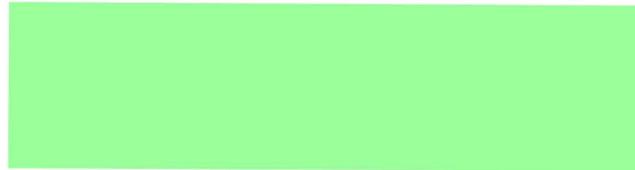


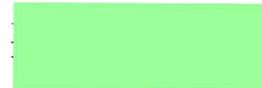


U.S. Citizenship
and Immigration
Services

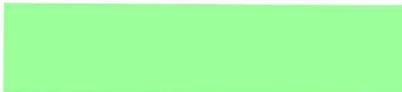
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DATE: JAN 15 2014 OFFICE: CALIFORNIA SERVICE CENTER

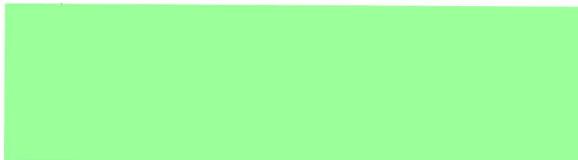


IN RE: Petitioner:
Beneficiary:



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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
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 withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, the AAO will remand the petition for further action and consideration.

The petitioner is a school. 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 Quran instructor and Islamic studies teacher. The director determined that the petitioner failed to establish that it qualifies as a bona fide non-profit religious organization in the United States or a bona fide organization that is affiliated with the religious denomination.

On appeal, the petitioner submits an uncertified copy of its 2008 Form 990, Return of Organization Exempt From Income Tax, and copies of documents already in the record.

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 U.S. Citizenship and Immigration Services (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:

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.

Tax-exempt organization means an organization that has received a determination letter from the IRS establishing that it, or a group that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the Internal Revenue Code . . .

The regulation at 8 C.F.R. § 204.5(m)(8) requires the following initial evidence:

- (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 for Amerasian, Widow(er), or Special Immigrant, on August 2, 2010. The Religious Denomination Certification, included in the Employer Attestation portion of the petition, was signed by the vice president of the petitioning organization and identified the petitioner as affiliated with the “Sunni Moslem” denomination.

Accompanying the petition, the petitioner submitted a December 3, 2002 letter from the IRS, confirming the petitioner’s exemption from taxation under section 501(c)(3) of the Internal Revenue Code (the Code). The letter further stated that the petitioner was determined to be “an organization described in sections 509(a)(1) and 170(b)(1)(A)(ii).” While section 170(b)(1)(A)(i) of the Code refers specifically to churches and related organizations, section 170(b)(1)(A)(ii) of the Code refers to certain educational organizations. The petitioner also submitted evidence of its tax exempt status under New York State law, and a copy of its Provisional Charter from the [REDACTED], which identified the petitioner’s purpose as “educational.”

Additionally, the petitioner submitted copies of promotional materials and mailings from the petitioning organization, which included school newsletters with schedules, general administrative information, advice to parents on helping children succeed in school, and notification of upcoming events such as standardized tests and college fairs. Additional information referenced religious activities such as the petitioner’s “Islamic academic environment,” and required “Arabic, Quran and Islamic Studies classes.” One of the communications states that the petitioner “is a private Islamic School.”

On July 29, 2011, USCIS issued a Notice of Intent to Deny the petition (NOID). The director noted that, according to the petitioner’s determination letter, it was granted tax-exempt status as something other than a religious organization. The director therefore instructed the petitioner to submit the required evidence to establish that it qualifies as a bona fide organization that is affiliated with the religious denomination.¹

¹ The director incorrectly cited the regulation at 8 C.F.R. § 214.2(r)(9)(iii), relating to the requirements for petitions for nonimmigrant religious workers, rather than the regulation at 8 C.F.R. § 204.5(m)(8)(iii). However, the nonimmigrant regulation sets forth the same evidentiary requirements regarding qualifying tax-exempt documentation.

In a letter responding to the NOID, the vice president of the petitioning organization stated that [REDACTED] is affiliated with [REDACTED], the owner of the building at the same address.” No evidence was submitted regarding the [REDACTED] or in support of the asserted affiliation between the two organizations. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

The petitioner also submitted an uncertified copy of its 2009 Form 990, Return of Organization Exempt From Income Tax. In Part 1 of the form, the petitioner described its “mission or most significant activities” as follows:

Organization has an enrollment of about 550 students from pre-kindergarten to tenth grade. The organization employs 40 full time teachers. Curriculum includes the usual courses taught in public schools coupled with various religious courses.

On February 21, 2012, the director denied the petition. The director stated that, “because the petitioner was granted tax-exempt status under 501(c)(3) as something other than a religious organization, the petitioner must meet all four prongs of 8 C.F.R. § 204.5(m)(8)(iii).” The director found that the petitioner met the requirements under 8 C.F.R. §§ 204.5(m)(8)(iii)(A), (C), and (D), but failed to meet the requirement of 8 C.F.R. § 204.5(m)(8)(iii)(B), noting that the submitted provisional charter stated that the petitioner was “organized and operated exclusively for educational purposes,” and did not indicate any religious nature or purpose of the organization. The director also noted that, although the petitioner had claimed affiliation with the Sunni Moslem denomination and with the [REDACTED] no supporting documentation was submitted to establish either affiliation.

On appeal, counsel for the petitioner states the following:

The Service erred in denying this I-360 petition filed by [REDACTED] on behalf of [REDACTED]. Please note that [REDACTED] is in fact recognized as tax-exempt religious organization under section 501(c)(3) as evidenced in the enclosed exempt organization certificate, proof of exemption under Section 501(c)(3) as well as (Form 990) tax filing by [REDACTED]. (Exhibit “C”).

Based upon the foregoing, we respectfully ask that you approve this I-360 petition.

The current regulations governing eligibility for classification as a special immigrant religious worker were published on November 26, 2008. In the preamble to the proposed rule, USCIS stated the following:

USCIS also proposes to add to the existing definition of “bona fide organization which is affiliated with the religious denomination in the United States” to include entities such as educational institutions, hospitals, or private foundations. ... Such entities may

qualify as a petitioning employer organization for immigration purposes even if their purpose is not exclusively religious, if documentation is provided to establish the organization's religious purpose and the religious nature of its activities. The eligibility of each organization will be determined on a case-by-case basis. An organization granted 501(c)(3) status by the IRS as something other than a religious organization must submit the Religious Denomination Certification contained in the Forms I-360 and I-129, signed by the attesting religious organization in the denomination to confirm the petitioning organization's affiliation with the religious denomination.

72 Fed. Reg. 20442, 20445 (April 25, 2007).

Although counsel asserts on appeal that the petitioner is recognized as a tax-exempt religious organization under section 501(c)(3), the submitted determination letter indicates that the petitioner was granted 501(c)(3) status as an educational organization. Therefore, the IRS determination letter is evidence of the petitioner's tax-exempt status but it is not evidence of the petitioner's religious nature or purpose. The director correctly stated that the petitioner must therefore establish that it qualifies as a bona fide organization which is affiliated with the denomination by submitting the additional evidence required under 8 C.F.R. § 204.5(m)(8)(iii).

The petitioner's submission of the IRS determination letter is sufficient to satisfy the regulation at 8 C.F.R. § 205.4(m)(8)(iii)(A).

The petitioner's provisional charter sets forth the purpose of the organization as "exclusively for educational purposes" and states:

The purposes for which such corporation is formed are:

- a. To conduct a nursery school for preschool children from two-and-one-half to five years of age;
- b. To conduct a kindergarten for children five years of age;
- c. To conduct a grade one through twelve school; and
- d. To operate a day care program from birth through two years of age.

Although the charter indicates that the petitioner's purpose is "exclusively for educational purposes," other documentation such as the petitioner's Forms 990, references the teaching of "various religious courses" as part of its "mission or most significant activities." The regulation at 8 C.F.R. § 204.5(m)(8)(iii)(B) does not indicate that the organizing instrument is the only document that may be used to determine the religious nature and purpose and does not require that the petitioner's nature and purpose be exclusively religious. The petitioner has sufficiently established its religious nature and purpose.

The flyers and communications submitted at the time of filing describe the religious nature of certain activities held by petitioning organization, and therefore meet the requirements of 8 C.F.R. § 204.5(m)(8)(iii)(C).

Regarding the regulation at § 204.5(m)(8)(iii)(D), the vice president of the petitioning organization signed the Religious Denomination Certification asserting the petitioner's affiliation with the "Sunni Moslem" denomination. The director stated that the petitioner "submitted a religious denomination certificate," and therefore met the requirement of 8 C.F.R. § 204.5(m)(8)(iii)(D). However, that regulation states that "[t]he **religious organization** must complete, sign and date a religious denomination certification certifying that the **petitioning organization** is affiliated with the religious denomination" (emphasis added). The regulation clearly differentiates between the religious organization and the petitioning organization. The form instructions contain identical language. As the regulation applies to a petitioner that is "something other than a religious organization," the "religious organization" which must sign the certification is an organization other than the petitioner. The petitioner has asserted its affiliation with the [REDACTED]. However, documentation has not been submitted to demonstrate that the [REDACTED] is a religious organization in the Sunni Moslem denomination, and the [REDACTED] has not certified the petitioner's affiliation with the denomination, as required. Accordingly, the petitioner has not met the requirement at 8 C.F.R. § 204.5(m)(8)(iii)(D).

As this deficiency was not previously noted by the director, the AAO will remand the petition for the director to afford the petitioner an opportunity to submit a religious denomination certification that complies with the regulation at 8 C.F.R. § 204.5(m)(8)(iii)(D), as discussed above.

The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.