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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JUL 23 2014 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 (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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

for 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 AAO on appeal. The AAO will dismiss the appeal.

The petitioner is an independent Christian 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 staff pastor. The director determined that the petitioner had not submitted required evidence of its tax-exempt status.

On appeal, the petitioner asserts that its application for recognition of tax-exempt status is pending, and requests sufficient time for the processing of the application.

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—
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> > (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
> >
> > (II) before September 30, 2015, 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, 2015, 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).

At issue in this proceeding is whether the petitioner has submitted required evidence of its tax-exempt status. As required initial evidence, the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(8) requires the petitioner to submit a currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization.

The petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on February 8, 2013. The form instructions contain identical requirements for the IRS determination letter. The initial submission included a December 28, 2012 letter from [redacted] lead pastor of the petitioning church, which cited IRS Publication 557, *Tax-Exempt Status for Your Organization*, as stating that churches and certain other organizations need not file IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code. IRS Publication 557 explains IRS policy toward churches, but the issue here is not what IRS requires for its purposes, but what USCIS requires for its purposes.

In the preamble to revised regulations published in 2008, USCIS explained why the regulations require submission of an IRS determination letter:

> Several commenters objected to the proposed requirement that petitioners must file a determination letter from the IRS of tax-exempt status under IRC section 501(c)(3), 26 U.S.C. 501(c)(3), with every petition. Commenters pointed out that the IRS does not require churches to request a determination letter to qualify for tax-exempt status. A designation that an organization is a "church" is sufficient to qualify for tax-exempt status. Although some churches choose to request a formal IRC section 501(c)(3) determination, they are not required to do so. . . .
>
> USCIS recognizes that the IRS does not require all churches to apply for a tax-exempt status determination letter, but has nevertheless retained that requirement in this final rule. . . . A requirement that petitioning churches submit a tax determination letter is a valuable fraud deterrent. An IRS determination letter represents verifiable documentation that the petitioner is a bona fide tax-exempt organization or part of a group exemption. Whether an organization qualifies for exemption from federal income taxation provides a simplified test of that organization's non-profit status.
>
> Requiring submission of a determination letter will also benefit petitioning religious organizations. A determination letter provides a petitioning organization with the opportunity to submit exceptionally clear evidence that it is a bona fide organization.

73 Fed. Reg. 72276, 72279-80 (Nov. 26, 2008).

The director issued a request for evidence on September 5, 2013. In that notice, the director specified that the petitioner had to submit a currently valid determination letter from the IRS.

In response, the petitioner repeated language from the initial submission, again citing IRS Publication 557 to show that the IRS does not require churches to file IRS Form 1023 to apply for recognition of tax-exempt status. The petitioner submitted other materials intended show that the petitioning organization exists for religious purposes.

The director denied the petition on November 19, 2013, stating that the petitioner had not submitted the IRS determination letter required by the regulation at 8 C.F.R. § 204.5(m)(8).

On appeal, Pastor states that the petitioner "has elected, up to this point in [its] history, to not file form 1023" due to the automatic recognition of exemption described in IRS Publication 557. Pastor asserts that the petitioner "is in [the] process of filing form 1023," and asks that the beneficiary "be considered for an extension and not denied a visa" while the application is pending. The petitioner requested a 24-month extension while the IRS processes the application.

The beneficiary's R-1 nonimmigrant religious worker status is separate from the present petition. There are separate procedures for extending her stay under that status; the filing of a Form I-360 petition does not result in such an extension.

Furthermore, the Form I-360 petition is not a placeholder to secure continuing benefits for the beneficiary while the petitioner obtains or creates required evidence. An applicant or petitioner must establish eligibility for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1), (12). Therefore, subsequent events cannot cause a previously ineligible alien to become eligible after the filing date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). The petitioner acknowledges that it did not have an IRS determination letter at the time it filed the petition. This is a facially disqualifying circumstance that the petitioner cannot cure on appeal. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). 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).

In correspondence dated December 30, 2013, we granted the petitioner an extension of 45 days in order to supplement the record. We specified that any future submission of required evidence that the petitioner had previously failed to submit, either with the petition or in response to the request for evidence, would not be considered on appeal. See *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). We advised the petitioner that any future IRS determination letter could accompany a new Form I-360 petition, but that the opportunity to submit one in support of the present petition had already passed.

The record contains no further correspondence from the petitioner. The petitioner does not contest the basis for denial (the lack of an IRS determination letter). Rather, the petitioner has asked that we suspend processing of the appeal until the petitioner has time to obtain one. For reasons discussed above, we cannot grant this request. The petitioner did not submit required evidence, and the director properly denied the petition on that basis.

The AAO will dismiss the appeal for the above stated reasons. 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). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.