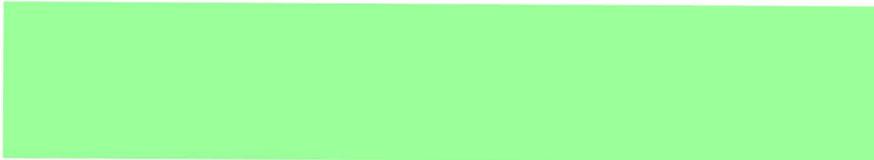


(b)(6)

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



DATE: **MAY 12 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,

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. We 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 a parish priest. The director determined that the petitioner had not submitted required evidence to establish that it qualifies as a bona fide nonprofit religious organization or a bona fide organization which is affiliated with the denomination. The director also found that the petitioner failed to establish that the beneficiary would be employed in a qualifying full time position.

On appeal, the petitioner submits a brief and additional evidence.

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) provides the following definitions:

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 . . .

Regarding evidence of the petitioner's tax-exempt status, the regulation at 8 C.F.R. § 204.5(m)(8) requires the following:

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 instructions to the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, also list these identical evidentiary requirements. The petition was filed on March 1, 2013, identifying the petitioner as the prospective employer with an employer identification number (EIN) of [REDACTED]. Accompanying the petition, the petitioner submitted a September 13, 1990, IRS letter to the [REDACTED] of America North and South and Australia (the diocese), EIN [REDACTED] confirming that organization's tax-exempt status under section 501(c)(3). The letter did not indicate that the diocese was granted a group exemption that would apply to subordinate or affiliated organizations. The petitioner also submitted evidence of its tax exemption in the state of Illinois as a religious organization.

In a request for evidence (RFE) dated May 9, 2013, the director instructed the petitioner to provide evidence of its bona fides as a non-profit religious organization as required by the regulations. The director specifically requested an IRS determination letter indicating the petitioner's own EIN or, if claiming to be covered by a group exemption, an IRS determination letter stating that the diocese "is group tax-exempted."

In response, the petitioner submitted a letter from the diocese stating that the petitioning church is part of the diocese. The petitioner also submitted additional evidence of the petitioner's affiliation with the diocese. Additionally, the petitioner submitted a March 8, 2013, letter from the IRS identifying the petitioner's EIN as [REDACTED].

The director denied the petition on September 13, 2013, finding in part that the petitioner had failed to submit the required IRS determination letter with the petition or in response to the RFE to establish it qualifies as a bona fide nonprofit religious organization in the United States that is exempt from taxation or a bona fide organization which is affiliated with the denomination. The director found that the petitioner failed to submit its own valid IRS determination letter, and that the determination letter for the diocese did not indicate that it had been granted a group exemption.

On appeal, the petitioner contends that it "fulfills the requirements for automatic federal tax-exemption and not-for-profit status as required by the Internal Revenue Service" and, alternately,

that the evidence of its exemption under Illinois state law “serve[s] the equivalent purpose of the IRS determination letter.” The petitioner additionally asserts that a diocese is, by definition, a group of churches, and that the petitioner is therefore also covered by a group exemption through its relationship to the diocese. In support of these assertions, the petitioner cites to our unpublished decisions and submits additional letters from the petitioner and the diocese and diagrams depicting the relationship between the organizations. While 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. Further, at least one of the cited decisions interpreted regulations which are no longer in effect and not relevant to the instant case, as the decision predates the current regulations, published on November 26, 2008.

At issue on appeal is whether the director erred in finding that the petitioner failed to submit the evidence required under the regulations. When USCIS published the religious worker regulation, supplementary information published with the regulation explained USCIS's rationale for requiring a valid 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. See Internal Revenue Service, *Tax Guide for Churches and Religious Organizations: Benefits and Responsibilities under the Federal Tax Law* (IRS pub. no. 1828, Rev. Sept. 2006). 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). Under the controlling regulations, the issue is not whether the IRS would automatically regard the petitioner as tax-exempt, but whether the petitioner has provided the required IRS determination letter. At filing, through the regulations and the form

instructions, the petitioner was on notice of the required evidence. The petitioner was given an additional opportunity to submit the IRS letter in response to the director's request for evidence. The petitioner failed to submit evidence of its own currently valid determination letter from the IRS. The petitioner submitted a determination letter for the diocese and evidence regarding its relationship to the diocese as a subordinate parish. However, as stated previously, the determination letter does not indicate that the IRS granted the diocese a group exemption that would apply to subordinate organizations.

A petitioner must establish eligibility at the time of filing and each benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions. See 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As the petitioner failed to submit required evidence, the petitioner failed to establish eligibility for the benefit sought.

The director also found that the petitioner failed to establish that the beneficiary would be employed in a qualifying full time position. The USCIS regulation at 8 C.F.R. § 204.5(m)(2) provides that, in order to be eligible for classification as a special immigrant religious worker, an alien must:

(2) Be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position in one of the following occupations as they are defined in paragraph (m)(5) of this section:

- (i) Solely in the vocation of a minister of that religious denomination;
- (ii) A religious vocation either in a professional or nonprofessional capacity;
or
- (iii) A religious occupation either in a professional or nonprofessional capacity.

On the petition, the petitioner indicated its intent to employ the beneficiary in a full time position as "Parish Priest of [REDACTED]" The petitioner described the proposed duties as follows:

Rev. [REDACTED] follows all religious holidays and Liturgical services in accordance with the Church calendar. He sees sick and elderly patients, arranges holiday functions, organizes the Sunday School, communicates with members and non-members, gives Communion, receives confessions, and administers services of prayers. He is the official representative of [REDACTED] in the Metropolitan St. Louis area and attends the Diocesan conventions and special meetings convened by the [REDACTED]

In the May 9, 2013, RFE, the director requested additional information about the proffered position including a detailed description of the specific job duties, the number of hours per week to be spent performing each duty, and a daily and weekly schedule for the position.

In response, the petitioner provided a description of the duties of the proffered position, indicating the minimum hours to be dedicated to: preparing the sermon, cleaning the altar and church, maintaining church supplies, preparing communications to the parish, preparing for and attending board meetings, and delivering the Sunday service. The petitioner further listed “many duties whose fulfillment and time investment vary over time depending on the need of the parishioners and/or other churches in the surrounding area,” including, in part, counseling members and non-members, calling and visiting parishioners, and participating in events and meetings with other organizations as the petitioner’s official representative.

In the September 13, 2013, decision, the director stated:

After careful review of the evidence submitted, it cannot be determined that the beneficiary will be working at least 35 hours a week. Here, evidence shows that the beneficiary will be working 13 hours a week in preparation for Sunday Service; 19 hours each month devoting to preparing letters to the parish, attending monthly board meeting[s], and preparing food for Sunday service; and 5 hours on each Sunday performing the Divine Liturgy. As calculated, the total amount of hours per week is at 22 hours. Based on the evidence that the petitioner submitted, the beneficiary will not be working in a full time (average of at least 35 hours per week) [position] for the petitioner.

On appeal, the petitioner contends that “[t]he sum of 22 hours is not an accurate representation of the materials presented” because “some duties described in the response to the [RFE] lacked assigned hours.” The petitioner submits a “sample weekly schedule depicting a standard assessment of time devoted to each duty per week” and a monthly calendar. The petitioner further states: “Given the variability inherent in the nature of the position of minister, it was not previously understood that the 35 hours had to have been explicitly identified.”

The schedule submitted on appeal identifies 36 hours of proposed duties in a sample week, including duties that were not assigned “minimum hours” in the RFE response. The additional duties are consistent with the previous descriptions of the proposed duties provided by the petitioner on the petition and in response to the RFE. Accordingly, the petitioner has established that the proffered job is a full time position. The director’s finding on this issue will be withdrawn.

As an additional matter, the petitioner has not established that the beneficiary has the required two years of continuous, qualifying work experience immediately preceding the filing of the petition. We conduct appellate review on a de novo basis. See *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The USCIS regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary has been working as a minister or in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously for at least the two-year period immediately preceding the filing of the petition. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work in lawful immigration status throughout the two-year period immediately preceding March 1, 2013.

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:

Minister means an individual who:

- (A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct such religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
- (B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
- (C) Performs activities with a rational relationship to the religious calling of the minister; and
- (D) Works solely as a minister in the United States, which may include administrative duties incidental to the duties of a minister. . . .

The petitioner initially submitted a copy of the beneficiary's 2011 IRS Form 1099-MISC, Miscellaneous Income, indicating that it paid the beneficiary \$15,600.00 during that year. In its response to the May 9, 2013, RFE, the petitioner stated that the beneficiary has continuously served as its parish priest since 2007. The petitioner additionally submitted uncertified copies of the beneficiary's IRS Forms 1040, U.S. Individual Tax Returns, for the years 2011 and 2012. In the 2011 tax return, the beneficiary included two Schedule C, Profit or Loss From Business, forms. The first listed his "[p]rincipal business or profession" as "Clergy" and indicated earnings of \$15,600, while the second listed his business or profession as "Cleaning Services" and indicated earnings of \$9,712. Similarly, the beneficiary's 2012 tax return included Schedule C forms for work as "Clergy," "Computer El Technici," and "Pizza."

The regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary has been working as a minister or in a qualifying religious occupation or vocation during the qualifying period, and the regulation at 8 C.F.R. § 204.5(m)(5) defines "minister" as one who "[w]orks solely as a minister in the United States." The petitioner has consistently indicated that the beneficiary was working as an ordained priest during the qualifying period, and the petitioner stated on the petition, in Part 2. Classification Requested, that the beneficiary's position is ministerial. However, the

submitted tax returns indicate that the beneficiary was engaged in additional secular employment during the qualifying period. Accordingly, the beneficiary's purported work as a priest cannot be considered qualifying experience as he was not working "solely as a minister" as required by the regulations. See *Matter of Faith Assembly Church*, 19 I&N 391, 393 (Comm'r. 1986). The Ninth Circuit Court of Appeals, whose jurisdiction includes the California Service Center, has upheld our interpretation of the two-year experience requirement. See *Hawaii Saeronam Presbyterian Church v. Ziglar*, 243 Fed. Appx. 224, 226 (9th Cir. 2007).

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, 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, that burden has not been met.

ORDER: The appeal is dismissed.