



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **APR 06 2015** OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

[REDACTED]

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. Upon *de novo* review, we will dismiss the appeal.¹

The petitioner is an Islamic mosque and school. It seeks to classify the beneficiary as a special immigrant religious worker under section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as an “Imam and Religious Teacher.” The director determined that the petitioner did not submit 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 did not meet its burden of proof with respect to the employer attestation.

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

Section 203(b)(4) of the Act accords classification to a qualified special immigrant religious worker, and section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), defines such a worker as 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, 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)[.]

¹ We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

I. QUALIFYING ORGANIZATION

First, we must determine whether the prospective employer qualifies as a bona fide nonprofit religious organization.

A. Law

The 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 individual 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 [Internal Revenue Service] 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, in pertinent part:

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 . . .

B. Facts and Analysis

The petitioner filed the Form I-360, Petition for Special Immigrant, on June 13, 2011, identifying itself as [REDACTED] with the Federal Employer Identification Number (EIN) [REDACTED]. The petitioner submitted documentation that [REDACTED] incorporated on May 21, [REDACTED]. The petitioner also submitted an IRS determination letter, dated March 1, [REDACTED], and addressed to the [REDACTED] EIN [REDACTED] exempting the [REDACTED] from federal income tax under section 501(c)(3) of the Internal Revenue Code (IRC).

In a May 18, 2011, letter submitted in support of the petition, the petitioner's letterhead described [REDACTED] as "formerly the [REDACTED]" The petitioner's bylaws, adopted October 3, [REDACTED] referred to the organization as "[REDACTED]" (henceforth referred to as [REDACTED])."

On November 19, 2013, the director issued a Request for Evidence (RFE), in part requesting additional evidence that the petitioner qualifies as a bona fide non-profit religious organization. The director requested an "updated" IRS determination letter, noting that the name and address on the submitted letter did not match those of the petitioning mosque.

In response, the petitioner submitted a copy of a September 19, 2013, IRS letter addressed to [REDACTED] at the petitioner's address, confirming that a determination letter was issued to [REDACTED] in March [REDACTED]. In a letter responding to the RFE, the petitioner asserted that the [REDACTED] was founded in [REDACTED] and, to avoid being mistaken for a similarly named mosque in the [REDACTED] area, hired a corporate attorney in [REDACTED] to change its name. The petitioner stated that it has operated as [REDACTED] Since [REDACTED] using the original EIN of the [REDACTED] The petitioner further stated that, as a result of questions raised during the immigration petition process, it has since "reincorporated" [REDACTED] and merged that organization with [REDACTED] "so that the two entities are now one legal entity." The petitioner submitted a copy of a December 30, 2013 Certificate of Incorporation for [REDACTED] as well as documentation of a January 14, 2014, merger between [REDACTED] and [REDACTED]

The director denied the petition on April 4, 2014, finding that the petitioner did not submit an IRS determination letter relating to the petitioning organization, as required by 8 C.F.R. § 204.5(m)(8). The director found that the submitted IRS determination letter for the [REDACTED] did not relate to the petitioning organization, which was incorporated as a separate entity. The director further found that, because the recent merger leaves [REDACTED] rather than [REDACTED] as the surviving organization, the petitioning organization no longer exists.

The petitioner contends on appeal that it has always acted as "one and the same" organization as the [REDACTED] and "formalized a legal merger of the two entities so that the [REDACTED] with the original 501(c)(3) designation," would remain valid following the merger between [REDACTED] and [REDACTED]. Accompanying the appeal, the petitioner submits evidence that [REDACTED] is now a registered trade name of [REDACTED]

On October 29, 2014, we issued a Notice of Intent to Dismiss the appeal (NOID), advising the petitioner that [REDACTED], incorporated in [REDACTED], appears to be a separate and distinct organization from the [REDACTED] and that the State of Georgia corporate records indicate that [REDACTED] did not survive a 2014 merger with [REDACTED]. In response, the petitioner asserts that it "first learned that [REDACTED] had been incorporated as a separate legal entity" in [REDACTED], and that it previously operated "under the assumption that the corporate attorneys in [REDACTED] simply did a name change." Furthermore, the petitioner states:

We have always held ourselves out to the public as both [REDACTED] and [REDACTED]. In no way, whatsoever, was our organization trying to hide or mislead our identity. Rather, we truly believed that we were one in the same organizations, and have now gone through every legal step to make sure that this is correct.

For purposes of resolving the immigration matter at hand, we credit the petitioner's assertion that it mistakenly believed [REDACTED] and the [REDACTED] to be one organization. At filing and in response to the RFE, the petitioner submitted ample documentation demonstrating its continued use of both names and [REDACTED] use of the [REDACTED] EIN. We do not question the petitioner's credibility on this issue, and we recognize its recent efforts to resolve incongruities arising from changes over the years. Our task today, however, is more prosaic; we must determine whether the petitioner has met the regulatory requirements for a petitioning organization.

As cited above, the regulation at 8 C.F.R. § 204.5(m)(8) requires the submission of a currently valid IRS determination letter establishing the tax-exempt status of the petitioning organization. The IRS has exclusive jurisdiction over the validity of its determination letters. In our NOID, we cited an IRS revenue ruling, Rev. Rul. 67-390, 1967-2 C.B. 179 (1967), in which the IRS held that, when a new legal entity has been created, each new entity must establish its own exemption. A subsequent Tax Court decision, *American New Covenant Church v. Commissioner*, 74 T.C. 293 (T.C. 1980), cited the 1967 revenue ruling and reaffirmed the core principle that each legal entity requires a separate determination by the IRS. In the 1980 case, an unincorporated association applied for recognition of tax-exempt status. While its application was pending, the association filed articles of incorporation. The IRS determined that a new entity had been formed by the filing of these articles of incorporation. It concluded that 1) the newly formed corporation was distinct from the unincorporated association that had previously filed an application for exemption, and 2) the newly formed corporation needed to file its own application for exemption. The Tax Court agreed, ruling "that the two organizations [should] be treated as separate, independent legal entities." *Id.* at 302.

In its response to our NOID, the petitioner does not address these citations but rather urges that we treat the discrepancies in name and tax status as technical, unintentional, and immaterial. Despite the petitioner's credible assertions regarding its intentions, the above-mentioned IRS ruling and Tax Court decision are dispositive of the case at hand. Specifically, the above-mentioned IRS ruling and Tax Court decision establish that when [REDACTED] incorporated in [REDACTED] it formed a separate, independent legal entity from the [REDACTED] and that each legal entity must now independently establish tax-exempt status. The submitted IRS letters, which only address the tax-exempt status granted to the [REDACTED] in [REDACTED] are therefore insufficient to establish the tax-exempt status of the petitioning organization, [REDACTED] or the surviving entity, [REDACTED]. The regulations provide no exception to the requirement of a currently valid IRS determination letter, and we have no discretion to disregard the regulatory requirement. Accordingly, as the petitioner did not submit

required evidence relating to the currently-indicated prospective employer, we must dismiss the appeal on that basis.²

This finding is made without prejudice to any future petitions filed by [REDACTED] should it obtain a valid IRS determination letter establishing its tax-exemption under section 501(c) of the IRC.

II. EMPLOYER ATTESTATION

Next, we address whether the petitioner met its burden of proof with regard to the employer attestation.

A. Law

The regulation at 8 C.F.R. § 204.5(m)(7) requires an authorized official of the prospective employer to complete, sign, and date an attestation providing specific information about the employer, the beneficiary, and the terms of proposed employment. The prospective employer must specifically attest, in pertinent part, to the following:

- (iii) The number of employees who work at the same location where the beneficiary will be employed and a summary of the type of responsibilities of those employees. USCIS [U.S. Citizenship and Immigration Services] may request a list of all employees, their titles, and a brief description of their duties at its discretion;
- (iv) The number of aliens holding special immigrant or nonimmigrant religious worker status currently employed or employed within the past five years by the prospective employer's organization;
- (v) The number of special immigrant religious worker and nonimmigrant religious worker petitions and applications filed by or on behalf of any aliens for employment by the prospective employer in the past five years;

B. Facts and Analysis

The petitioner attested on the petition to having 56 employees at the location where the beneficiary would work. At the time of filing, the petitioner submitted a staff list of 57 individuals, including the beneficiary, with their titles, dates of hire, and salary.

² On appeal, the petitioner submits a copy of an unpublished AAO decision relating to a separate petition filed by [REDACTED] in which we found [REDACTED] to be the same organization as the [REDACTED]. Our decision in that matter did not address the subsequently discovered IRS rulings on this topic that compel our current resolution. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

In the November 19, 2013, RFE, the director instructed the petitioner to submit a "comprehensive roster" of paid employees, including name, date of hire, job title, salary, and work address. In its letter responding to the notice, the petitioner stated that there were "4 individuals teaching at [REDACTED] (3 employees and 1 contractor)" where the beneficiary is "tasked with overseeing all the other teachers" and "acting as a 'principal' for matters at the school" The petitioner also submitted a document entitled "Employee Details." In denying the petition, the director found that the petitioner had made conflicting assertions regarding its number of employees, and that the "Employee Details" document was illegible.

In response to the RFE, the petitioner asserted that four individuals teach at the school to which the beneficiary is assigned. Contrary to the director's finding, this assertion does not contradict the petitioner's initial statement that it has 57 employees (including the beneficiary). The staff list submitted at filing sufficiently supports the petitioner's assertions, and we will therefore withdraw the director's finding regarding the number of the petitioner's employees.

In addition, the petitioner attested on the petition to employing eight special immigrant or nonimmigrant religious worker employees within the last five years, and to having filed 15 special immigrant and nonimmigrant religious worker petitions within the last five years. In the RFE, the director stated that USCIS records indicate the petitioner has filed 26 petitions since June 13, 2006. The director instructed the petitioner to submit detailed lists of all petitions filed and all special immigrant and non-immigrant religious workers employed in the given years preceding the filing of the instant petition. In response, the petitioner stated that it had initially been confused as to what filings had been made, and had inadvertently included employees for whom it had not filed religious worker petitions. The petitioner submitted a detailed list of 20 pending, denied, approved, and withdrawn petitions, asserting that it worked with new counsel to attempt to gather all relevant information and documentation. The director found that the submitted list remained incomplete and that the petitioner did not adequately explain the discrepancy with regard to the number of special immigrant and nonimmigrant religious worker petitions filed.

The petitioner has not fully resolved the inconsistency between its submitted list of previous filings and those shown in USCIS records. Nonetheless, the director did not find, and the evidence does not indicate, that the petitioner willfully misrepresented a material fact on this issue. Rather, the petitioner's explanation of its initial confusion and subsequent efforts to give a more accurate record is consistent with the submitted evidence. We find that this inconsistency, which is not directly material to the merits of the petition, is not so egregious as to warrant a finding that the petitioner failed to comply with the regulation 8 C.F.R. 204.5(m)(7).

For the reasons discussed above, we will withdraw the director's finding that the petitioner did not meet its burden of proof with respect to the employer attestation.

III. CONCLUSION

The petitioner met its burden of proof with regard to the employer attestation but did not submit required evidence to establish that it meets the regulatory definition of a bona fide nonprofit religious organization. We must therefore dismiss the appeal.

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.