



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF C-B-S-O-W-, INC.

DATE: AUG. 22, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner, a Buddhist organization, seeks to classify the Beneficiary as a special immigrant religious worker to perform services as a Buddhist monk. *See* Immigration and Nationality Act (the Act) section 203(b)(4), 8 U.S.C. § 1153(b)(4). This immigrant classification allows non-profit religious organizations, or their affiliates, to employ foreign nationals as ministers, in religious vocations, or in other religious occupations in the United States.

The California Service Center Director denied the petition. The Director concluded that the Petitioner had not provided the required evidence to establish that it is a bona fide non-profit religious organization or a bona fide organization that is affiliated with the denomination.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence.

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

I. LAW

Non-profit religious organizations may petition for foreign nationals to immigrate to the United States to perform full-time, compensated religious work as ministers, in religious vocations, or in other religious occupations. The petitioning organizations must establish that the foreign national beneficiary meets certain eligibility criteria, including membership in a religious denomination and continuous religious work experience for at least the two-year period before the petition filing date. Foreign nationals may self-petition for this classification. *See generally* section 203(b)(4) of the Act (providing 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)).

The implementing regulation at 8 C.F.R. § 204.5(m) provides that in order to be eligible for classification as a special immigrant religious worker, a foreign national must:

- (1) For at least the two years immediately preceding the filing of the petition have been a member of a religious denomination that has a bona fide non-profit religious organization in the United States.

- (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.
- (3) 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.
- (4) Have been working in one of the positions described in paragraph (m)(2) of this section . . . after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition.

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, a beneficiary 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.

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.

II. ANALYSIS

The issue within this appeal relates to the Petitioner's non-profit status. In denying the petition, the Director determined the Petitioner did not submit a valid IRS determination letter reflecting the Petitioner's tax-exempt status. For the reasons discussed below, we agree with the Director.

The regulation contains specific documentary requirements for petitioners to show their tax-exempt status. For a religious organization, such evidence consists of a petitioner's own IRS determination letter establishing the organization is tax exempt, or a group determination letter. For organizations that are affiliated with a religious denomination, we require the IRS determination letter, materials demonstrating the religious nature and purpose of the organization and of its activities, as well as a signed religious denomination certification.

It is not the Petitioner's position that it is a tax exempt under a group determination letter or an affiliated organization. As such, it must present its own IRS determination letter exhibiting its tax exempt status under section 501(c)(3) of the Internal Revenue Code. The Petitioner offered several forms of evidence from the State of Wisconsin relating to its status. However, materials originating from local and state agencies are not sufficient to comply with the regulation at 8 C.F.R. § 204.5(m)(8). Before the Director, the evidence originating from the IRS consisted of a July 7, 1991, document relating to the Petitioner's Federal Employer Identification Number (FEIN). This item advised: "Assigning an Employer Identification Number does not grant tax-exempt status to nonprofit organizations." This notice does not meet the Petitioner's burden of proof as it is not a determination of tax exempt status. The Petitioner also provided a change of address form destined for the IRS, which does not meet the regulatory requirements.

On appeal, the Petitioner submits a January 19, 2016, notice from the IRS that also relates to its FEIN. This document is not an IRS determination letter as required by the regulation at 8 C.F.R. § 204.5(m)(8). The Petitioner cannot demonstrate eligibility without this evidence.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not presented the required evidence to demonstrate that it is a qualifying organization. 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. Accordingly, we will dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of C-B-S-O-W-, Inc.*, ID# 17733 (AAO Aug. 22, 2016)