U.S. Department of Justice

Immigration and Naturalization Service

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Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: Nebraska Service Center Date: JAN 03 2002

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: 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)

IN BEHALF OF PETITIONER: [redacted]

Public Copy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Myra L. Loaeny

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The approval of the immigrant visa petition was revoked by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a non-profit parochial school. It seeks classification of 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), in order to employ her as a "religious teacher for girls" at a salary of $20,800 per year.

The director revoked approval of the petition finding that the petitioner was not a qualifying religious organization for the purpose of special immigrant classification of any prospective employees.

On appeal, counsel for the petitioner indicated that a brief would not be submitted, but referred to the response to the Notice of Intent to Revoke dated October 6, 2000.

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 October 1, 2003, 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 October 1, 2003, 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 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 petitioner in this matter is described as a private Islamic K through twelve college preparatory school. The beneficiary is a native and citizen of Jordan last admitted to the United States on July 11, 1994 as a B-2 visitor. Her current immigration status is unknown.

The petition was filed on May 5, 1998 and approved on June 24, 1998. The director subsequently concluded that a parochial school was not a qualifying religious organization and that the petition had been approved in error. The director properly issued a notice of intent to revoke the approval affording the petitioner an opportunity to rebut the adverse determination. After reviewing the petitioner's response to the notice of intent, the director revoked approval of the petition.

At issue in this proceeding is whether the petitioner is a qualifying religious organization for the purposes of this type of visa petition proceeding.

8 C.F.R. 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

> (i) Evidence that the organization qualifies as a nonprofit organization in the form of either:
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> (A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations; or
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> (B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3).

To address this requirement, the petitioner submitted a letter from the Internal Revenue Service (IRS) dated July 3, (illegible), showing that it was granted tax-exempt status under section 501(c)(3). The letter indicates, however, that the basis for this status is that the petitioner is an organization described in section 170(b)(1)(A)(ii) of the Internal Revenue Code (IRC). This section refers to schools. This section is not the one relating to religious organizations. Cf. section 170(b)(1)(A)(i) IRC.

There are several classes of nonprofit organizations eligible for tax exemption under section 501(c)(3) of the Internal Revenue Code. Only organizations classified, or classifiable, as "churches" pursuant to sections 509(a)(1) and 170(b)(1)(A)(i) of the IRC are considered qualifying religious organizations for the purpose of special immigrant religious worker classification. For example,

charitable organizations or schools classified under sections 170(b)(1)(A)(vi) or 170(b)(1)(A)(ii) are not qualifying as religious organizations, even if they are organized and operate under the principles of a particular religious faith. Such organizations are not "churches" and do not employ religious workers as contemplated by the statute.

Counsel for the petitioner argued in part, that the organization also operates a mosque. However, the petition was filed by the school. While counsel did not furnish the corporate organizing instrument for the mosque and the school, the two are not considered one and the same under section 501(c)(3) of the Internal Revenue Code or under section 101(a)(27)(C)(ii)(III) of the Act. The decision of the director will be affirmed.

The petitioner is free to file a new petition for the alien beneficiary under alternate sections of the Act.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.