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U.S. Department of Homeland Security

Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536

[redacted]

SEP 2 0 2003

File: [redacted] Office: NEBRASKA SERVICE CENTER Date:
LIN 011 205 0379

IN RE: Petitioner:
Beneficiary: [redacted]

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)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that 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 that 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 Citizenship and Immigration Services (CIS) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Cindy N. Bonez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner 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), to perform services as a "Minister/Evangelist". The director determined that the petitioner had not established that it was a bona fide non-profit religious organization. The director also determined that the petitioner had not established that it has had the ability to pay the beneficiary the proffered wage since the filing date of the petition. Finally, the director determined that the petitioner did not establish that the beneficiary would be solely carrying on the vocation of a minister and would not be dependent on supplemental employment or solicitation of funds for support.

On appeal, the Form I-290B, Notice of Appeal, was signed by [redacted] (elder), of [redacted] On the Form I-290B, [redacted] indicated that the petitioner was submitting the requested evidence, along with a statement. Therefore, the record will be considered complete.

8 C.F.R. § 103.3(a)(1)(iii)(B) states:

> *Meaning of affected party.* For purposes of this section and §§ 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. An affected party may be represented by an attorney or representative in accordance with part 292 of this chapter.

The record reflects that the I-360 Petition for Amerasian, Widow, or Special Immigrant, was signed by [redacted] as the petitioner. The statement submitted on appeal was also signed by [redacted] We note that [redacted] signed a letter dated July 17, 2001, along with [redacted] attesting to the beneficiary's ordination and authorization to conduct religious worship services. The record contains no other documentation certifying that [redacted] may act as the petitioner's representative. The petitioner's representative, [redacted] for [redacted] has not signed the Form I-290B, Notice of Appeal.

8 C.F.R. § 103.3(a)(2)(i) states, in pertinent part: "The affected party shall file an appeal on Form I-290B." Under the provisions of 8 C.F.R. § 103.3(a)(2)(v), "An appeal filed by a person or

entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded."

In this case, the appeal has not been filed by the petitioner, or by any entity with legal standing in the proceeding. Therefore, the appeal has not been properly filed, and must be rejected.

Upon review of the record, it is further noted that the documentation submitted on appeal does not overcome the findings of the director.

Regarding the issue of whether the petitioner is a bona fide nonprofit religious organization, the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), require a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS). In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement which applies to churches, and a copy of the organizing instrument of the church which contains a proper dissolution clause and which specifies the purposes of the organization.

The record includes a State of Missouri letter of "Exemption From Missouri Sales and Use Tax on Purchases and Sales," effective March 3, 1997 through March 3, 2002. The record also includes a letter from the IRS, dated December 17, 1990, to Gospel Hill Church of Christ, indicating that the IRS Form 941 was received but required a signature for processing. A letter of recognition from the IRS granting tax-exempt status to the petitioner is not included in the record.

The record does not include a completed IRS Form 1023, the Schedule A supplement which applies to churches, or a copy of the organizing instrument of the church which contains a proper dissolution clause and which specifies the purposes of the organization. The submitted "Warranty Deed" of October 10, 1959, discusses the "control and disposal" of church property, but does not contain a dissolution clause relating to the proper distribution of assets upon dissolution of the church. The submissions do not meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A) or (B).

Regarding the ability of the employer to pay the proffered wage, 8 C.F.R. § 204.5(g)(2) states in pertinent part that, "Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements." The initial filing contained no evidence of the petitioner's ability to pay. In response to the director's request for more

evidence, the petitioner submitted church bulletins highlighting the weekly contributions from members, financial statements of the church, and the beneficiary's bank statements showing multiple deposits of $640. The financial statements submitted are unaudited reports; federal tax returns or annual reports also were not submitted. The submitted bank statements of the beneficiary show deposits of $640 on a generally weekly basis, with some deposits made on back-to-back dates and ranging as far as 11 days apart. The petitioner did not submit IRS W-2 forms, pay stubs, cancelled checks, the beneficiary's individual tax forms, or other objective evidence to establish that these payments are, in fact, made by the petitioner.

It also is noted that although the director affirmatively stated that the petitioner met all of the other requirements under this provision, the evidence contained in the record does not appear to establish that the beneficiary was continuously engaged as a religious worker for the two years preceding the filing date of the petition, or that the beneficiary is qualified to perform the duties of a religious vocation or occupation.

ORDER: The appeal is rejected.