

U.S. Department of Homeland Security
425 I Street, N.W. Room 6100
Washington, DC 20536



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

Elizabeth Bedient, Esq.
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MAR 09 2004

RE: Religious Organizations

Dear Ms. Bedient:

This is in response to your letter requesting expedited review of an appeal pending at the Administrative Appeals Office. We apologize for the delay in formally responding to your letter.

In your letter, you express concerns over the interpretation of the term "religious organization" by the Nebraska Service Center and the Administrative Appeals Office. This office is not in a position to provide you with an advisory legal opinion, intervene or comment on matters which are pending before the U.S. Citizenship and Immigration Services ("CIS").

Our regulations, at 8 CFR 204.5(m)(2), define a bona fide religious organization as "an organization which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 (IRC) as it relates to religious organizations." The requirements are reiterated at 8 CFR 204.5(m)(3)(i) and stipulate that evidence accompanying each petition for a religious worker must show that the employing religious organization qualifies as a nonprofit organization.

In order to establish nonprofit status, the petitioner must produce documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the IRC as it relates to religious organizations or such documentation as is required by the Internal Revenue Service (IRS) to establish eligibility for exemption under section 501(c)(3) of the IRC as it relates to religious organizations.

There are several classes of nonprofit organizations eligible for tax exemption under section 501(c)(3) of the IRC. Organizations which are classified or classifiable as "churches" pursuant to sections 509 (a)(1) and 170(b)(1)(A)(i) of the IRC can generally be considered qualifying religious organizations for immigration purposes. Classification for tax purposes under section 170(b)(1)(A)(i) of the IRC, however, is only one method of determining if the petitioner is a religious organization for the purpose of establishing eligibility for special immigrant religious worker status. Other organizations classified under section 170(b)(1)(A) of the IRC may qualify as religious organizations for immigration purposes if it can be established that they are organized for religious purposes and operate under the principles of a particular

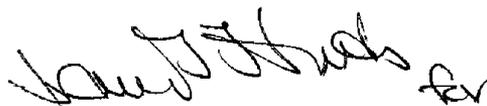
faith, rather than solely for education, charitable, scientific and other 501(c)(3) qualifying purposes.

Thus, CIS field officers have been instructed to review, in addition to IRS documentation, evidence which establishes the religious nature and purpose of the organization such as a copy of the petitioner's organizing instrument as well as brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

Whether your client can qualify as a religious organization under the criteria set forth above for the purpose of obtaining special immigrant religious worker status is a determination to be made in the context of the adjudicative process. As stated previously, this office cannot provide you with an advisory legal opinion, intervene or comment on matters pending before the CIS.

I hope you find the above information useful.

Sincerely,



Marguerite P. Kleczek, Esq.
Associate Counsel
Chief, Adjudications Law Division