

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services

HQ70/8

*425 I Street NW
Washington, DC 20536*

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MEMORANDUM FOR SERVICE CENTER DIRECTORS, CIS
REGIONAL DIRECTORS, CIS
DISTRICT DIRECTORS, CIS

FROM: WILLIAM R. YATES /S/ by Janis Sposato
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U.S. Citizenship and Immigration Services
Department of Homeland Security

SUBJECT: Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations.

Purpose: To notify the Citizenship and Immigration Services (CIS) staff that the Special Immigrant Religious Worker Visa Classification has been extended and to clarify the tax-exempt status requirements for employing religious organizations which should be considered during the adjudication of the Form I-360 Special Immigrant Religious Worker petition and the Form I-129 Non-Immigrant Religious Worker petition.

Extension of the Special Immigrant Religious Worker Program until September 30, 2008:

Subclauses (II) and (III) of section 101(a)(27)(C)(ii) of the INA provide for the admission as "special immigrants" for those who qualify as professional or other religious workers in a religious vocation or occupation. These provisions sunset on September 30, 2003. This sunset date did not apply to the religious worker category for those individuals who enter solely for the purpose of carrying on the vocation of a minister of a religious denomination.

On October 15, 2003, the Act "To amend the Immigration and Nationality Act to extend for an additional 5 years the special immigrant religious worker program" (Public Law 108-99) was signed into law extending the special immigrant religious worker classification for another 5 years until September 30, 2008.

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Prior to the enactment of Public Law 108-99, CIS issued a memo on July 18, 2003 addressing the expedited handling of Special Immigrant Religious Worker Petitions subject to the September 30, 2003 sunset. Since visa numbers are now available, the processing of these petitions and associated adjustment of status applications should resume, without expedited status.

Clarification of Tax Exempt Status Requirements for Religious Organizations

Background:

Requirements specified at 8 CFR 204.5(m)(2) define a bona fide religious organization as “. . . 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 (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 for the religious organization to establish their nonprofit status they 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.

Required Evidence and Status:

There are several classes of nonprofit organizations eligible for tax exemption under sections 501(c)(3) of the IRC. Those 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 the purpose of special immigrant religious worker classification. Qualifying as a religious organization “church” under section 170(b)(1)(A)(i) of the IRC is only one method of determining if the petitioner is a qualifying organization. Other organizations classified under section 170(b)(1)(A) of the IRC may qualify if it can be established that this classification is due to religious factors and 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.

The following is a list of the documents that may be submitted to properly establish the status of a non-profit religious organization:

- (A) A signed letter from the IRS showing that the organization is exempt from taxation in accordance with section 501(c)(3) of the IRC as it relates to religious organizations; or
- (B) For religious organizations that are recognized as tax exempt under a group tax exemption, the signed letter should establish that the group is an organization as described in section 509(a)(1) of the IRC, and that the group's tax exemption is in accordance with section 501(c)(3) of the IRC; or

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- (C) Such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the IRC, as it relates to religious organizations; *and*
- (D) Documentation which establishes the religious nature and purpose of the organization. This documentation should include, at a minimum:
 - (1) A properly completed IRS Form 1023;
 - (2) A properly completed Schedule A supplement, if applicable;
 - (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization;
 - (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

If there are any questions concerning this memorandum, please contact Irene Hoffman in the Office of Program and Regulation Development or Joe Holliday in Service Center Operations, through appropriate channels.