



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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File: EAC-00-226-5073

Office: Vermont Service Center

Date:

AUG 23 2001

IN RE: Petitioner:  
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:



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. Rosenly*  
for Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, Vermont Service Center. An appeal was dismissed by the Associate Commissioner for Examinations. The matter is again before the Associate Commissioner on motion to reconsider. The motion will be granted, the petition will be denied.

The petitioner is a Hindu religious organization that seeks classification of the beneficiary as a special immigrant minister 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 him as a Pandit or Hindu priest.

The center director denied the petition on the grounds that the petitioner failed to establish that the beneficiary had the requisite two years of experience in a religious occupation pursuant to 8 C.F.R. 204.5(m)(3)(ii). The director found that the claim that the beneficiary had volunteered with the organization did not constitute the requisite experience in a religious occupation. The Associate Commissioner, by and through the Director, Administrative Appeals Office ("AAO"), dismissed the appeal affirming the center director's analysis. The AAO decision noted additional grounds of ineligibility.

On motion, counsel for the petitioner argues that the petition was filed for classification of the beneficiary as a minister and that the Service misapplied the provisions pertaining to lay persons in religious occupations.

On review of the record, it is concluded that counsel's argument is correct. The prior appellate decision will be withdrawn and the motion to reconsider is hereby granted. The record will be reviewed *de novo*.

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 Hindu religious organization. The petitioner submitted documentation showing that it has been recognized by the Internal Revenue Service with the appropriate tax exempt status since 1977. The beneficiary is described as a native and citizen of Trinidad who last entered the United States, without inspection by an immigration officer, in October 1995.

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

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

(B) That, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested...

8 C.F.R. 204.5(m)(2) states, in pertinent part, that:

*Minister* means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the

minister. The term does not include a lay preacher not authorized to perform such duties.

It must first be determined whether the petitioner has established that the beneficiary qualifies as a minister for the purpose of special immigrant classification.

The petitioner testified that the beneficiary is a Pandit and submitted a "certificate of recognition" it issued to certify that the beneficiary was ordained on December 6, 1995.

In this case, it must be concluded that the petitioner failed to establish that the beneficiary is qualified as a minister as defined in these proceedings. The petitioner failed to show any established standards within its denomination to recognize individuals as priests or ministers who are authorized to perform all the duties of a member of the clergy and failed to establish that the beneficiary has satisfied any such standards. The record contains no documentation that the beneficiary has received any formal theological training or has satisfied any standards set by an authority of the denomination. Nor does the record contain any license or other documentation establishing that the beneficiary is authorized to perform the functions of a clergy person, such as marriages, by the State of New York or any other authority. Absent such documentation, the Service cannot conclude that the beneficiary is a qualifying minister of religion pursuant to the definition at 8 C.F.R. 204.5(m)(2). Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

The record does not sufficiently demonstrate that the beneficiary is a qualified minister authorized to perform the duties of a member of the clergy, rather than a "lay preacher" pursuant to the pertinent regulation. The certificate of recognition issued by the petitioner is not sufficient to establish the petitioner's claim. Simply producing documents purported to be certificates of ordination, which are not based on theological training or education, is not proof that an alien is entitled to perform the duties of a minister. Matter of Rhee, 16 I&N Dec. 607 (BIA 1978).

It is noteworthy that the petitioner asserted that it ordained the beneficiary shortly after his unlawful entry into the United States. It is not reasonable to assume that a religious organization would recognize an individual, newly arrived to its congregation, as a minister without a thorough review of his or her credentials and background. The petitioner failed to provide any explanation of the procedure by which it "ordained" the beneficiary in December 1995. This absence of documentation of the petitioner's recognition of the beneficiary as a Pandit in its denomination raises questions of the credibility of the claim. In

addition, while not specifically required by regulation, the petitioner in this case also failed to submit such elementary documentation as proof of the beneficiary's identity such as his passport or other credible identification.

It must next be determined whether the petitioner has established that the beneficiary was continuously engaged as a minister of religion for at least the two years preceding the filing of the petition.

The petition was filed on January 14, 1998. Therefore, the petitioner must establish that the beneficiary had been continuously engaged as a minister of religion since at least January 14, 1996.

Regarding the prior work experience, the petitioner claimed that the beneficiary has served its congregation as a priest, without compensation, since 1995.

On review of the record, it is concluded that the petitioner has failed to establish that the beneficiary has the requisite experience. First, as noted above, the petitioner has not established that the beneficiary is a qualified minister for the purposes of this proceeding.

Second, the petitioner has not adequately established that the beneficiary has been continuously carrying on the vocation of a minister in the United States since January 1996. The petitioner submitted several letters from its members who testified that the beneficiary has served the congregation for the period specified. It must be concluded that these uncorroborated testimonials are not sufficient.

The Service in this matter is unable to confirm that the beneficiary was even present in the United States for the period at issue. The petitioner stated that the beneficiary entered the United States in October 1995, without inspection. Absent the beneficiary's travel documents, the Service is unable to verify the alleged date of entry. The petitioner submitted no additional objective evidence of the beneficiary's claimed period of residence in the United States, such as certified tax records or other documents issued by a governmental authority. It is noteworthy that the petitioner offered no explanation of the incongruous claim that the beneficiary, as a minister of religion, knowingly entered the United States in an unlawful manner. Again, simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, supra. Absent supporting objective documentary evidence, it cannot be concluded that the petitioner has established that the beneficiary was

continuously carrying on the vocation of a minister in the United States since January 1996.

Third, in the case of special immigrant ministers, it was held in Matter of Faith Assembly Church, 19 I&N 391 (Comm. 1986) that the alien must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought. The petitioner made no claim and submitted no evidence that the beneficiary was solely carrying on the vocation of a minister since at least January 1996. The fact that the beneficiary was not compensated for his services with the petitioner raises the issue that he was also engaged in supplemental employment as a means of financial support. This would be disqualifying for classification as a special immigrant religious worker.

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 prior decision dated June 13, 2000, is withdrawn. The petition is denied.