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U.S. Department of Justice

Immigration and Naturalization Service

identification data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

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

File: EAC-00-259-54179 Office: Vermont Service Center Date: MAY 06 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

Mym L. Rosenberg
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The record will be remanded to the center director for further review.

The petitioner is a Sikh temple. 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 him as a Tablachi, or religious musician, and director of religious music at the temple at a salary of $300 per week.

The center director denied the petition stating that the simple position title of "Director of Music" had not been shown to be a religious occupation.

Counsel argued on appeal that a *Tablachi* in the Sikh faith is a traditional occupation similar to that of a cantor as listed in the definition of a qualifying religious occupation at 8 C.F.R. 204.5(m)(2). Additional documentation was submitted.

On review, the record is persuasive in demonstrating that a *Tablachi*, or religious musician, employed in a full-time permanent manner in the Sikh faith can qualify as a religious occupation for the purpose of special immigrant classification. Therefore, the grounds stated for denial of the petition have been overcome.

However, the record reflects additional deficiencies in the petition and it may not be approved. The petitioner has failed to satisfy the prior experience requirement of 8 C.F.R. 204.5(m)(1), the job offer requirement of 8 C.F.R. 204.5(m)(4), and the ability to pay requirement of 8 C.F.R. 204.5(g)(2).

8 C.F.R. 204.5(m)(1) requires that the beneficiary of a special immigrant petition have been continuously carrying on a religious occupation for at least the two years preceding the filing of the petition. In this case, the petitioner asserted that the beneficiary had been employed as a Tablachi for many years. However, the petitioner's own testimony is insufficient to establish this claim without supporting evidence. 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).

It is incumbent on the petitioner to provide a detailed description of the beneficiary's employment history for the two-year period supported by contemporaneous documentation. For example, it was claimed that the beneficiary has resided in the Untied States since July 1998. The petitioner must submit evidence of the beneficiary's claimed employment in the Untied States in the form

of federal tax records or other comparable indicia. The petitioner must also provide a detailed description of the beneficiary's foreign employment and such evidence as is available.

8 C.F.R. 204.5(m)(4) states that the petitioner must submit a job offer showing how the alien will be remunerated and demonstrating that he will not be dependent on supplemental employment. It is noted that the beneficiary is married with two dependent children. Here, the record is not persuasive in demonstrating that the beneficiary would subsist on the wage of $300 per week without resort to supplemental employment. The petitioner must also demonstrate the ability to pay a qualifying wage by submitting the temple's federal tax returns, annual statements, or audited financial statements pursuant to 8 C.F.R. 204.5(g)(2).

The record will be remanded for a further review of the record and to afford the petitioner the opportunity to supplement the record. The director shall then issue a new decision.

ORDER: The decision dated April 24, 2001 is withdrawn; the record is remanded for the purpose of a new decision.