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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 MASS, 3/F  
425 I Street N.W.  
Washington, D.C. 20536

File: WAC 01 031 54655

Office: CALIFORNIA SERVICE CENTER

Date: NOV 13 2003

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)

ON BEHALF OF PETITIONER:

**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. Honey for*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Acting Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification 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 perform services as the head monk of Wat (Buddhist temple) Sirithamahaysokaram.

The acting director denied the petition on multiple grounds in a decision dated April 8, 2002. Specifically, the director found that the petitioner had failed to establish that: that the proposed position constitutes a qualifying religious vocation or occupation; he is qualified to engage in a religious vocation or occupation; the prospective employer was a qualifying tax-exempt religious organization as of the date the petition was filed; and, the prospective employer has the ability to pay the proffered wage.

On appeal, petitioner's prior counsel submits a brief and additional documentation.<sup>1</sup>

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, 2008, 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, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination

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<sup>1</sup> The appeal was filed on May 2, 2002 by the petitioner's prior counsel, [REDACTED] with a brief and additional documentation. The record contains a duly executed Form G-28, Notice of Entry of Appearance of Attorney or Representative, dated February 12, 2003, reflecting that the petitioner's new counsel is [REDACTED]

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 is a native and citizen of Laos who was last admitted to the United States on May 24, 1991 as a nonimmigrant visitor (B-2) with authorization to remain until November 23, 1991. He subsequently obtained an extension of his authorized period of admission valid through May 24, 1992.

In order to establish eligibility for classification as a special immigrant religious worker, a petitioner must establish each of several eligibility requirements.

The first issue to be addressed in this proceeding is whether the petitioner has established that the proposed position constitutes a qualifying religious occupation or vocation for the purpose of special immigrant classification.

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

*Religious vocation* means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

*Religious occupation* means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The pertinent regulations were drafted in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they may not be salaried in the conventional sense and may not follow a conventional work schedule. The regulations distinguish religious vocations from lay religious occupations. 8 C.F.R. § 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the

taking of vows. While such persons are not employed *per se* in the conventional sense of salaried employment, they are fully financially supported and maintained by their religious institution and are answerable to that institution.

The director determined that the petitioner failed to establish that the position of monk is a religious occupation. However, the regulation specifically lists "monk" as an example of a qualifying religious vocation. Therefore, this portion of the director's decision shall be withdrawn.

While the position of monk is a qualifying religious vocation, the director also found that the petitioner had failed to establish that he is qualified as a monk.

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that:

*Initial evidence.* Unless otherwise specified, 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:

\* \* \*

(D) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother, or that the type of work to be done relates to a traditional religious function.

With the initial filing of the petition, the petitioner submitted a letter stating that the Buddhist principle taught at Wat Sirithamahaysokaram is Theraveda Buddhism, a denomination common in Southeast Asia. He stated that he became a novice monk at the age of ten and was ordained, as an adult, as a singha (Buddhist clergy) to conduct religious worship and preach about Buddhism. The petitioner further stated that while a ceremony is held to ordain a monk, no certificates of ordination are issued.

In a letter dated March 26, 2001, the acting director requested the petitioner, through counsel, to submit "evidence that the beneficiary participated in a ceremony conferring monk-hood status." In response, counsel asserted that the beneficiary was ordained as a monk in 1955 at Wat Ban DoneHai, Muong Xaiphanni, Laos, that an ordained Buddhist monk is a minister of a Buddhist

temple, and that the petitioner therefore qualifies for special immigrant classification as a minister. In support of the appeal, counsel submitted uncertified translations of Laotian documents, photographs that are not date-stamped and do not identify the occasion or the persons photographed, and a social security card and California Senior Citizen identification card belonging to the petitioner.

There is no documentary evidence contained in the record to establish that the petitioner is an ordained monk, other than his and counsel's statements. 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 assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). For this reason, the petition may not be approved.

The acting director also found that the petitioner failed to establish that the prospective employer is a qualifying tax-exempt religious organization.

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

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations; or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3).

The petitioner must demonstrate that the employing organization maintained the appropriate tax-exempt recognition as of the date of filing the petition. See *Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971).

The record reflects that the employing organization applied for recognition of exemption under section 503(c)(3) of the Internal Revenue Code (IRC) on May 3, 2002. The Internal Revenue Service subsequently granted Wat Sirithamahaysokaram exemption from federal income tax on February 23, 2003. The petition, however, was filed on November 6, 2000. The petitioner has failed to establish that the employing organization was a qualifying tax-exempt religious organization as of the date the petition was filed. For this reason as well, the petition may not be approved.

The acting director also found that the petitioner had not established that a valid job offer had been extended.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

*Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

With the initial filing of the petition, the petitioner stated that he would receive approximately \$500 per month for his services at Wat Sirithamahaysokaram and that a junior monk would receive approximately \$100 per month, both dependent on the amount of donations received by the temple. The petitioner further stated that he and the junior monk live rent-free at the temple. However, on appeal, prior counsel states that the petitioner will receive no monetary payment for his services as a monk, but will be provided with food, clothing, shelter, transportation, health and other amenities by the temple.

Based on the information provided, the petitioner indicates that he is the only authorized official of Wat Sirithamahaysokaram. He and the junior monk are both solely dependent on donations made to the temple. There is no clear indication that the petitioner will not be dependent upon the solicitation of funds for support. For this reason as well, the petition may not be approved.

The final issue raised by the director to be addressed is whether the prospective employer has the ability to pay the proffered wage.

The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part, that:

Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

The information contained in the record indicates that Wat Sirithamahaysokaram is an independent Buddhist temple, having

from 500 to 1,000 members. Financial documentation submitted shows that it held bank account balances from January 2001 through April 2002 of approximately \$20,000 to \$30,000.

The petitioner has not furnished the church's annual reports, federal tax returns, or audited financial statements that are current as of the date of filing the petition. Therefore, the petitioner has not satisfied this documentary requirement. For this reason as well, the petition may not be approved.

It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

In reviewing an immigrant visa petition, the AAO must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the beneficiary in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of B. Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

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 appeal is dismissed.