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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[Redacted]

File: [Redacted] Office: VERMONT SERVICE CENTER Date: SEP 30 2003

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

PUBLIC COPY

[Redacted]

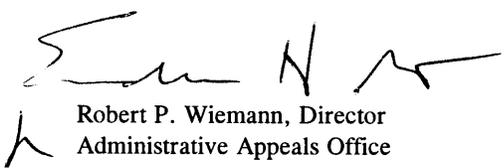
INSTRUCTIONS:

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 the Bureau of Citizenship and Immigration Services (Bureau) 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.


Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a non-profit organization established in 1990 as a holistic health institute and a Hindu temple (mandir). The petitioner 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 Hindu priest (pandit).

The director denied the petition, finding that the petitioner failed to establish that the beneficiary had the requisite two years of continuous experience in a religious occupation.

On appeal, counsel for the petitioner submits a brief and additional documentation.

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 beneficiary is a 30-year old native and citizen of India. The beneficiary last entered the United States as a B-1 nonimmigrant visitor for pleasure on December 28, 1996.

The first issue to be addressed in this proceeding is whether the petitioner established that the beneficiary had been continuously carrying on a religious occupation for the two years preceding the filing of the petition.

8 C.F.R. § 204.5(m) (1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on April 24, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation or vocation since at least April 24, 1999.

The director of the petitioning organization wrote CIS that:

[The beneficiary] has had formal Sanskrit training . . . He also was trained at the Nav durga Mandir in Sham Nagar in Ludhiana [India], an affiliate of [the petitioning organization.] . . . [The beneficiary] was able to complete a degree¹ at the KavikulGuru Institute of Technology and Science . . . [The beneficiary] . . . has been born in Hinduism and has worked for the past three years full time performing Hindu rituals as required by [the petitioning organization]. His compensation has been free board and lodge at the Mandiram in Epping, New Hampshire.

The record of proceeding includes an affidavit written by the director of the petitioning organization that states:

[The beneficiary] is a Brahmin priest. He received his training as a priest at Krishna Mandirma Institute of Holistic Health and Yoga in India. He completed his studies there on December 30, 1993. The training to become a Brahmin priest is rigorous. . . . Once a person has completed the training, they became a Pujari or priest's assistant. This is a form of on the job training for priesthood. This, again, is the equivalent of an assistant pastor in a Catholic or Episcopal parish.

[The beneficiary] has been performing the duties of

¹ The beneficiary earned a degree in engineering.

first a Pujari and then a Brahmin priest, on a full time basis for the past 8 years since he completed his studies. In addition to the five years spent at [the petitioning organization], [the beneficiary] also has had two years of paid experience as a Pandit at Nav Durga Mandiram in Ludhiana, Punjab, India. Nav Durga Mandiram is an affiliate of [the petitioning organization].

It is important to note that Pandits are not on a payroll in India. They are supported by the Temple where they practice. They receive dakshina from the people for whom they perform religious worship. This dakshina goes directly to the priest for whom they perform religious worship. Additionally, the Pandits also receive about 15-20% of the donations given in general funds to the Mandiram or Temple. There are no payroll records for the money given to the Pandits. If a Pandit performs a lot of rituals, that Pandit will earn a lot of money. If not, the Pandit has to rely on the small percentage of donations to the Mandiram.

[The beneficiary] is not on a payroll. He has no social security number nor authorization to be on any payroll. Once he receives authorization he will receive a salary and a small percentage of the dakshina from the individuals for whom specific poojas and rituals are performed. Dakshina is an offering of money and other things such as clothing and food given in thanks for the services of the priest.

All the Brahmin priests at [the petitioning organization] are provided for in terms of free lodging, free food and personal expenses. I give them spending money from my pocket and buy their clothes. They also receive some small amounts of dakshina from the people for whom they perform rituals and poojas.

[The beneficiary] has been performing daily rituals, poojas, sanskaras and religious instruction at [the petitioning organization] for the past five years under the arrangements outlined [above].

In response to the director's request for additional evidence, counsel for the petitioner wrote that:

In regard to the request for payroll records and time sheets for the Brahmin priests, Pandit Ramsamooj's affidavit states that they do not keep time records and that the priests are not on a payroll. These are priests with specific duties which they perform. Their priestly duties are not unlike the duties of a Catholic priest. Catholic priests do not punch time clocks nor are they on

payrolls. These are Hindu Brahmin priests who perform all aspects of Hindu worship and have room, board, clothing, personal expenses and spending money provided without being on a payroll at present.

The director noted that undocumented volunteer work experience does not meet the two-year work requirement and concluded that the petitioner had failed to submit conclusive documentation to establish that the beneficiary had fulfilled the two-year work experience requirement.

On appeal, counsel for the petitioner submits additional affidavits that state that the affiants are members of the petitioning organization and that the beneficiary has been performing his priestly duties for years.

In review, the evidence is insufficient to establish that the beneficiary satisfies the two-year work experience requirement. The affidavits are essentially identical. In the absence of corroborating evidence in the form of W-2's and certified tax returns to show that the beneficiary had been paid for his services, the AAO cannot conclude that the beneficiary has the two-year work experience.

It is noted that the petitioner suggests that it intends to employ the beneficiary in a vocation, rather than in a religious occupation. The petitioner likened the proffered position to that of a Catholic or Episcopal priest. The petitioner stated that Hindu priests are not paid a salary. Yet the petitioner asserts that it will commence to pay the beneficiary a salary as soon as he receives work authorization and a social security number. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Further, while the determination of an individual's status or duties within a religious organization is not under CIS' purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

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.