

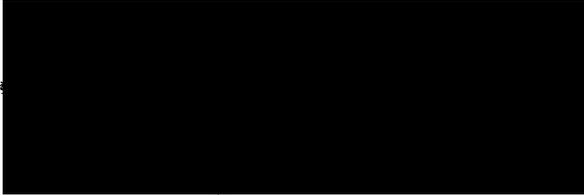
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**U.S. Citizenship  
and Immigration  
Services**



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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **AUG 04 2004**

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 of the Administrative Appeals Office 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a "Buddhist organization for various Buddhist assembly, services, education and activities." It seeks to classify 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), to perform services as a Buddhism instructor/program organizer. The director determined that the petitioner had not established that the position qualified as that of a religious worker. The petitioner's motion to reconsider was forwarded to the AAO pursuant to 8 C.F.R. § 103.3(a)(2)(iv).

On appeal, counsel 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, 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 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 regulation at 8 C.F.R. § 204.5(m)(2) offers the following definition of a "religious occupation":

*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.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions perform services that are directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

CIS therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The petitioner states the duties of the proffered position as follows:

1. Write, edit and produce publications, tapes, video tapes, CD and books to preach Buddhism;
2. Organize our center's daily program and service to preach Buddhism;
3. Schedule and propagate our free Chinese medical/Acupuncture/Acupressure treatments to followers;
4. Conduct public relationship (sic) for the center.

The described duties are not primarily secular in nature. The petitioner lists job qualifications to include being a Buddhist member for at least two years, has taken Refuge in the [REDACTED] and has experience in writing, editing and preaching Buddhism. The beneficiary currently holds a similar position in a Buddhist center in Taiwan. The evidence establishes that these duties are directly related to the religious creed of the organization, and are designed to teach the principles of the Buddhist faith. The position requires a person with knowledge of the religion beyond what would be expected of an ordinary member of the congregation.

The petitioner has adequately established that the position of Buddhism instructor/program organizer for this religious organization is a religious occupation.

Nevertheless, the case may not be approved as the record now stands, and it will be remanded to the director to request further evidence and to enter a new decision.

The director should address whether the petitioner has established that the beneficiary has been continuously employed in the religious vocation for two full years prior to the filing of the visa petition.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication

being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

The petition was filed on April 30, 2003. Therefore, the petitioner must establish that the beneficiary was continuously employed as a Buddhist instructor/program organizer for two full years preceding that date.

In the rare case where volunteer work might constitute prior qualifying experience, the petitioner must establish that the beneficiary, while continuously and primarily engaged in the traditional religious occupation, was self-sufficient or that his or her financial well being was clearly maintained by means other than secular employment.

The beneficiary's temple in Taiwan submitted a statement indicating that the beneficiary volunteered his services for 41 hours per week with the temple. The abbot of the temple indicated that the beneficiary invests in a food company and is able to support himself financially as a result. The petitioner submitted copies of the beneficiary's 2002 tax payment and copies of certificates of balance of several accounts owned by the beneficiary and his wife. These documents reflect that the beneficiary claimed gross income of "NT\$349,950" in 2002. The bank balances

reflected that the petitioner and his wife had the equivalent of approximately \$375,500 (U.S. value) in several accounts in a Taiwanese bank.

The petitioner, however, submitted no evidence of the source of the income reported by the beneficiary. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Further, the record does not establish how much time the beneficiary devoted to his business or whether the business is an investment only.

On remand, the petitioner should be given an opportunity to establish by competent evidence that the beneficiary did not rely on secular employment for his financial support during the requisite two-year period.

The director should also address whether the petitioner has adequately established that the needs of the petitioning entity will provide permanent, full-time religious work for the beneficiary in the future. Part-time volunteer participation in church activities is not a qualifying job offer for the purposes of this employment-based visa petition.

This matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review