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U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 01 123 52846 Office: CALIFORNIA SERVICE CENTER Date: JUL 19 2004

IN RE: Petitioner:
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:

[redacted]

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. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion to reconsider will be granted, the previous decision of the AAO will be affirmed and the petition will be denied.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Citizenship and Immigration Services (CIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

In its prior decision, the AAO held that as the petitioner had not established that the beneficiary had worked in a full-time, salaried position, the evidence did not establish that the beneficiary had worked continuously in a qualifying religious vocation for the full two years preceding the filing of the visa petition.

On motion, counsel states that prior counsel erroneously reported that the beneficiary's work experience during the two years preceding the filing of the visa petition was as a volunteer with the petitioner. Counsel submits a copy of the beneficiary's Form 1040, U.S. Individual Income Tax Return, for the years 1999, 2000, 2001 and 2002, which show "income from temple" of $6923, $6991, $7019, and $7118 respectively. The petitioner also submits a statement dated June 28, 2003 and signed by its director and secretary, Satwindar Singh Sadhal, who states that the beneficiary "has been receiving a compensation of approximately $1000 per month, which includes room and board, food, transportation, and a subsistence allowance."

The record contains a statement dated October 15, 2001 signed by [redacted] the petitioner's president, in which they state that the beneficiary "has performed his priestly services on a voluntary basis," but that the petitioner had proved him with "accommodation, food, transportation and all other necessities of life," as well as a small subsistence allowance for "personal hygiene and medical care." No value was placed on these benefits, but [redacted] stated that the beneficiary could not receive other compensation for his services because he did not have permission to work.

Therefore, it appears that while the beneficiary was not an employee of the petitioner, he was remunerated for his services by in-kind compensation of lodging and subsistence. The petitioner did not, however, submit evidence of this compensation, such as a Form 1099-Misc, Miscellaneous Income. The beneficiary's tax returns did not include any Forms 1099-Misc indicating payments from the temple from the years the beneficiary indicates he received payment, 1999-2002. The beneficiary's income tax returns submitted by the petitioner are incomplete and are not consistent with its statements that the beneficiary was compensated at a rate of $1,000 per month. Further, there is no evidence that these returns were actually filed with the Internal Revenue Service (IRS).

The record does not establish that a priest with the petitioning organization lives in a clearly unsalaried environment. In their letter of October 15, 2001, [redacted] tate "Sikh Temples have this unique tradition of providing food and shelter to anyone who needs it. The beneficiary being a priest was entitled to receive all this." The petitioner submitted no evidence of the type of lodging and subsistence it offers to its priests. The record does not reflect that the petitioner owns or maintains a dormitory or other

lodging. The financial statements submitted by the petitioner reflect total expenses for groceries and supplies in 1999 and 2000 at less than $1,000 a year. The minimal amount of expenses quoted does not support the petitioner's claims that it provides subsistence for its priests.

The evidence submitted with the motion does not reflect that the beneficiary has been continuously employed in a religious vocation for the immediate two years preceding the filing of the visa petition.

In its prior decision made beyond the decision of the director, the AAO held that the petitioner had not established its ability to pay the proffered salary. On motion, the petitioner submits copies of an accountant's compilation report for 2000, unaudited financial statements for 2001 and 2002, a copy of its September 2001 bank statement and "tax-exempt certificates."

The regulation at 8 C.F.R. § 204.5(g)(2) states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence. The accountant's compilation report and the unaudited statements are based primarily on representations of management. Therefore, no opinion as to whether they present fairly the financial position of the petitioner can be determined. In light of this, limited reliance can be placed on the validity of the facts presented in the financial statements that have been submitted. No further supporting documentation is included in the record to reflect the assertions made by the accountant in the financial documentation, or contained within the unaudited financial statements.

Additionally, although not addressed by the director or the AAO in its previous decision, the petitioner has not provided evidence of its tax-exempt status under section 501(c)(3) of the Internal Revenue Code (IRC) of 1986 as it relates to religious organizations. This deficiency constitutes another ground for denial of the petition. The regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

> (3) *Initial evidence*. Unless otherwise specified, 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 § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or
>
> (B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the IRS is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the IRC as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, which applies to, churches, and a copy of the organizing instrument of the church which contains a proper dissolution clause and which specifies the purposes of the organization.

The record contains a copy of a March 1, 2001 letter from the IRS informing it that it did not have to file a Form 940, as it is an exempt organization under section 501(c)(3) of the IRC, and a letter from the Franchise Tax Board for California stating that it is exempt from California state tax. The documentation submitted by the petitioner does not meet the requirements of the regulation and is insufficient to establish its tax-exempt status as a bona fide religious organization.

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. As no new evidence has been presented to overcome the grounds for the previous dismissal, the previous decisions of the AAO and the director will be affirmed. The petition is denied.

ORDER: The AAO's decision of June 5, 2003 is affirmed. The petition is denied.