



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
WAC 02 101 54569

Office: CALIFORNIA SERVICE CENTER

Date: JAN 04 2005

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:

[REDACTED]

PUBLIC COPY

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

Robert P. Wiemann, Director
Administrative Appeals Office

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DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition. On further review, the director determined that the petitioner was not eligible for the visa preference classification. Accordingly, the director properly served the petitioner with a notice of intent to revoke the approval of the preference visa petition and his reasons therefore, and subsequently exercised his discretion to revoke the approval of the petition on November 4, 2003. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Sikh temple. 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 priest. The director determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization. The director also determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

On appeal, counsel submitted a brief and copies of previously submitted documentation.

Section 205 of the Act, 8 U.S.C. § 1155, states that the Attorney General (now the Secretary of the Department of Homeland Security), "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

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 Internal Revenue Service (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 Internal Revenue Code (IRC) of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, if applicable, and a copy of the organizing instrument of the organization that contains a proper dissolution clause and which specifies the purposes of the organization.

With the petition, the petitioner submitted a copy of its articles of incorporation and a copy of a "Statement by Domestic Nonprofit Corporation" filed by the petitioner with the state of California. In response to the director's request for evidence (RFE) dated May 22, 2002, the petitioner submitted copies of the IRS Form 1023 that the petitioner completed on July 24, 2002, the petitioner's bylaws, and an IRS letter notifying the petitioner of its employer identification number. The petitioner also resubmitted the copies of its articles of incorporation and the nonprofit statement that it filed with California.

In his Notice of Intent to Revoke dated September 25, 2003, the director stated that, in response to a request for evidence in support of the beneficiary's request for adjustment of status, the petitioner submitted a letter from the IRS granting the petitioner tax-exempt status as a nonprofit religious organization. The director stated that the letter from the IRS was dated September 3, 2002, after the filing date of the petition.

In response to the director's Notice of Intent to Revoke, counsel stated that the evidence submitted in response to the RFE met the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B). The director determined that, as the petitioner did not submit this evidence at the time the petition was filed, it did not meet the requirements of the regulation. However, the evidence was submitted in response to the director's RFE and prior to approval of the petition. We find the evidence was sufficient at the time the visa petition was approved to establish that the petitioner is a nonprofit religious organization exempt from taxation.

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 Revenue 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)(1) echoes the above statutory language, and states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition, has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States.” The regulation indicates that the “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 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:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on January 31, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as a priest throughout the two-year period immediately preceding that date.

In its letter accompanying the petition, the petitioner stated that the beneficiary served as priest of the Takhat [redacted] in Anandpur, India from July 1985 to February 2001. An October 30, 2001 “certificate” from the [redacted] states that the beneficiary “worked as TABLA VADAK (Ragi) and Priest from 11-7-85 to 1-2-2001.” The certificate does not indicate whether the beneficiary was employed full time at the temple or if he was compensated for his services. The petitioner provided no evidence to corroborate the beneficiary’s employment with the temple. 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).

In the petitioner's response to the RFE, the beneficiary submitted a statement in which he indicated that in February 2001, he visited the United States and performed religious services for the petitioner. He also stated that since November 2001, he also volunteered his services with the petitioner. The beneficiary stated that he worked 40-70 hours per week, that he was compensated for his services by donations received from members of the congregation, supplemented by the \$4,000 he brought with him from India, and that the petitioner provided him with room and board. Neither the beneficiary nor the petitioner provided evidence of the money the beneficiary stated that he brought with him from India.

The petitioner submitted a July 30, 2002 letter from officers of the petitioner, in which it stated that the beneficiary did volunteer work with the organization from February to August 2001. The letter indicated that the beneficiary "helped the [redacted] Temple and the [redacted] community wherever his services as a Sikh Priest were needed . . . His loyalty and good morals and ethics were also exposed when he helped maintain the premises in which he was afforded room and aboard during his volunteer services." The letter did not indicate how often the beneficiary worked with the organization or the amount of time he devoted to providing services there. The petitioner submitted no evidence to corroborate the beneficiary's association with the temple.

In his Notice of Intent to Revoke, the director stated that the Form G-325A, Biographic Information, indicated that the beneficiary was not employed from August to November 2001, and that the beneficiary's "volunteering at various temples throughout Northern California" did not sufficiently support eligibility for the visa classification.

In response, the petitioner stated that between February 13, 2001 and August 1, 2001, the beneficiary was visiting California on a B-2 visa, and that while there:

[The beneficiary] volunteered his services as a [redacted] priest at this newly established religious organization . . . His services as a [redacted] consistently amounted to 40-70 hours of performing religious services. Although [the beneficiary] could not be compensated via salary, he was provided with free lodging, food and transportation.

[His] knowledge and proficiency in the preaching and religious songs on Sikhism were noticed and acknowledged by many Sikhs around California. Based on this, congregation and committee members from other Sikh Temples around California requested for him to visit their [redacted] temples to address their local congregations and part take [sic] in the prayer services. [The beneficiary] accepted these invitations and made his rounds at the various Sikh Temples. While keeping the [petitioner] as his base, he spent time (sometimes weeks at a time) at the Northern California Sikh Society Temple in Hughson, California and [redacted] temple in West Sacramento, California. Similarly to [the petitioner], in turn for his volunteer services as a Sikh priest, [the beneficiary] was provided with free lodging accommodations, food and transportation at both Temples.

The petitioner submitted no documentary evidence from the various temples to corroborate the beneficiary's services during this time. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190.

The petitioner also stated that the beneficiary returned to India on August 2, 2001 and resumed employment with the [REDACTED] and remained there until October 31, 2001. The petitioner submitted a September 30, 2003 "certificate" from the [REDACTED] in which the manager of that organization now states that the beneficiary returned to work with the temple on August 5, 2001 and remained until the end of October of the same year. The record contains no evidence to explain the Sahib's failure to indicate in its 2001 statement that the beneficiary had returned to work for the organization in August and was apparently working for the organization at the time the certificate was issued. Further, we note that both the petitioner and the beneficiary originally stated that his employment with the [REDACTED] temple ended in February 2001. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The petitioner further stated that the beneficiary was invited to return for the opening ceremony of its new temple November 2, 2001, and from the date of his arrival, he again volunteered his time with the petitioner until the date of the filing of the visa petition.

In his letter accompanying the response to the Notice of Intent to Revoke, counsel stated that the information on the G-325A indicating that the beneficiary was unemployed from August to November 2001 was an error by counsel. In his Notice of Revocation, the director noted that the beneficiary twice signed the G-325A (on January 2002 and November 7, 2002), indicating that he was unemployed during this four-month period. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

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.

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.

On appeal, the petitioner submitted a letter from the Northern California [REDACTED] Temple in Hughson, California, in which its president stated that in the months of March to July 2001, the beneficiary "frequently came and provided his services as Sikh priest along with our Head priest . . . [The beneficiary] is often invited to perform prayers in the 3-day prayers, and wedding and funeral services . . . When providing services in our area, [he] was given free room and meals at the [REDACTED]"

The petitioner also submitted a letter from the [REDACTED] Sacramento. The chairman of the temple's executive committee stated that "since February, 2001," the temple had invited the beneficiary on "many, many occasions to speak on Sikh faith, and read [REDACTED] to the general congregation and to explain its meaning."

On appeal, counsel again assumes responsibility for the statements on the form G-325A indicating that the beneficiary was unemployed for four months in 2001, explaining that it was a "typographical error." Nonetheless, as noted by the director, the beneficiary, by his signature on two forms G-325A, confirms his unemployment status during this time frame. Further, although the petitioner submits a certificate from [REDACTED] in [REDACTED] indicating that the beneficiary returned to work in the temple in August 2001, no documentary evidence was submitted to verify the beneficiary's employment with the temple. *Matter of Treasure Craft of California*, 14 I&N Dec. 190.

The record does not establish that the beneficiary worked continuously in a religious occupation for two full years prior to the filing of the visa petition.


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The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.