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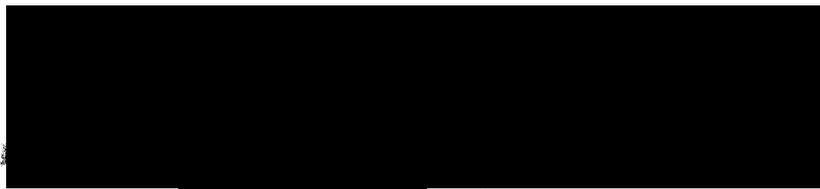
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

CI



FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **JUL 05 2005**
WAC 05 217 52747

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

PETITION: Immigrant 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 on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner operates a number of centers dedicated to teaching the Kabbalah, which is derived from Jewish writings. The petitioner 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 Kabbalah instructor. The director denied the petition on a variety of grounds.

Several elements of the director's decision are unclear. For instance, the director concluded that the petitioner failed to show that the beneficiary is qualified to work in a religious vocation, but the decision reflects no clear logic used to arrive at that conclusion. Other parts of the decision appear to be devoted to rebutting claims that the petitioner has not made, such as a discussion of whether the beneficiary works in a professional capacity as defined at 8 C.F.R. § 204.5(m)(2). In general, the decision is presented in such a way that it is difficult to determine exactly why the petition was denied.

Also, the director appears to have ignored key evidence. The director, for instance, concluded that the job offer was not full-time, because the petitioner offers Kabbalah classes only 16 hours per week; but a work schedule provided by the petitioner shows several duties in addition to teaching these classes. It is one thing if the director finds reason to question the credibility of the schedule, but the document should not simply be disregarded.

The director stated that the petitioner has not established its ability to pay the beneficiary and several dozen other workers for whom it has filed petitions. While there is something to be said for this finding, the director made several peripheral observations that appear to be inapplicable. For instance, the director faulted the petitioner for not submitting copies of Form 990 returns. As a tax-exempt entity classified under section 170(b)(1)(A)(i) of the Internal Revenue Code, the petitioner is not required to file Form 990.

The record also contains evidence that raises serious questions, but which the director has not brought to the petitioner's attention. With regard to ability to pay, we note that 8 C.F.R. § 204.5(g) indicates that the United States employer must show this ability. Under this immigrant classification, the employer and the petitioner are not necessarily one and the same.

The petitioner indicates that the beneficiary is a *chevre*, who receives no salary but rather works for room, board, medical services and other benefits, plus a small stipend. A determination of ability to pay, therefore, should rely on evidence to establish the employer's ability to provide these amenities. The record contains a copy the constitution of the [REDACTED] Article VI, paragraph 5 of that document states, in part:

Each local and regional [REDACTED] shall be responsible for raising funds . . . to provide for the needs of the Commissioned Lay Workers assigned to it, and to cover all of its other operating costs. . . . [T]he minimum amounts necessary to cover the needs of the Commissioned Lay Workers . . . will be set by the Board of Directors of Kabbalah Center International.

Because each local center is responsible for providing for the material needs of its workers, we must identify the center where the beneficiary works, and determine that center's ability to meet the beneficiary's needs. The Form I-360 petition shows the beneficiary's address as being identical to the Los Angeles address of the petitioning entity (which is the organization's headquarters).

Following a request for evidence, the petitioner has submitted several documents indicating that the beneficiary lived and worked in Queens, New York. For instance, a list of *chevre* places the beneficiary in New York, and an official of the petitioning entity states that the beneficiary “moved to Queens, New York in September 2000” and works under the supervision of “the Director in our New York center.”

Subsequently, the director requested more specific information and evidence regarding the beneficiary’s living arrangements. In response, the petitioner submitted an undated declaration from Karen Berg, secretary of Kabbalah Centre International, indicating that the beneficiary “now lives in a communal residence of the Kabbalah Religious Order at 1062 Robertson Boulevard, Los Angeles, California.” On appeal, the petitioner submits an updated *chevre* list, dated December 7, 2004; this list places the beneficiary in New York. Thus, the petitioner has repeatedly provided inconsistent information as to the actual physical location where the beneficiary has been living and working. In the face of these inconsistencies, the director must instruct the petitioner to submit contemporaneous, first-hand documentation to establish exactly where the beneficiary has resided while working for the petitioner, and where the petitioner intends to employ and house the beneficiary in the future. If the beneficiary has worked for the petitioner at more than one center, the petitioner must establish, with a reasonable degree of precision, when the beneficiary moved from one center to another.

Also, because each center is financially responsible for its workers, 8 C.F.R. § 204.5(g)(2) requires the petitioner to submit acceptable financial documentation *pertaining to the center where the beneficiary will work*. The preponderance of evidence in the record seems to indicate that the beneficiary has worked, and seeks to continue to work, in Queens, New York. If this is in fact the case, then the petitioner must establish that the Queens center is able to provide for the beneficiary at the level set by the board of directors of the [REDACTED] and has consistently been able to do so ever since the petition’s July 22, 2003 filing date. All of the financial documents submitted to date have concerned the petitioner’s “Los Angeles Division,” comprised of the Los Angeles center and various other centers in the western United States.

The above-cited regulation requires that this documentation must take the form of copies of annual reports, federal tax returns, or audited financial statements. Pursuant to 8 C.F.R. § 103.2(b)(2)(i), if the petitioner does not submit this required evidence, the petitioner must submit secondary evidence and account for its failure to provide the primary evidence.

The director must also grant the petitioner the opportunity to provide objective evidence and a credible explanation as to why some documents place the beneficiary in Los Angeles while others place him in Queens. This is a serious discrepancy, which, if not overcome, provides grounds for denial of the petition due to the grave credibility issues it raises.

Another credibility issue that the director must allow the petitioner to address concerns documentation of the beneficiary’s vow of poverty. The petitioner indicates that the beneficiary has taken such a vow, and that the petitioner provides for all of the beneficiary’s needs including housing and food. This would indicate that the beneficiary works in a religious vocation as defined at 8 C.F.R. § 204.5(m)(2). Article III of the petitioner’s constitution, “Religious Order,” reads in part:

1. **Religious Order.** [REDACTED] is a recognized group of individuals who have voluntarily committed themselves for life, or a term of years, to live within the [REDACTED] community in accordance with and teaching Kabbalah. These individuals shall be known as Commissioned Lay Workers.

2. **Selection of Commissioned Lay Workers.** . . . The senior Rabbi shall direct the training and preparation of the candidates. When he believes their training is complete, he shall recommend them for commissioning as members of the Religious Order to the Chief Rabbi. The Chief Rabbi shall make the final selection of those individuals to be commissioned as members of the Religious Order.
3. **Vow of Poverty.** All members of the [REDACTED] shall take a vow of poverty or moderate lifestyle. Upon taking the vow, the members of the Religious Order shall commit their personal services exclusively to the Religious Order. Except as authorized by the Board of the Kabbalah Centre to which they are assigned, members of the Religious Order shall not work or become employed outside of Kabbalah Centre International. Any income earned through the performance of personal services outside of the Religious Order shall belong to the Religious Order. Members of the Religious Order shall draw their support from the Religious Order, according to need, and as allocated by the Board of the Kabbalah Centre to which they are assigned.

The constitution never refers to Commissioned Lay Workers as “chevre,” but the terms appear to be similar to those described for the beneficiary. We conclude that “chevre” and “commissioned lay workers” are one and the same. Article III, paragraph 4, indicates that each successful candidate “shall be granted a certificate showing his or her commission as a member of the Kabbalah Centre International Religious Order.”

The record contains no copy of any document that we can recognize as the “certificate” required by the petitioner’s constitution. This document could be vital in determining whether the beneficiary is *permanently* bound to the petitioning entity, or only for “a term of years.” A temporary arrangement offers a far weaker basis for permanent immigration benefits.

The petitioner has submitted a document, headed “Vow of Poverty.” Counsel refers to this document as “a copy,” but the document has the beneficiary’s original (not photocopied) signature. The document lists the elements of the vow, followed by the petitioner’s signature and the phrase “Date: June 1, 1995.” There is no indication on the document that it is simply reporting or reproducing information from an earlier document. The clear implication is that the beneficiary signed this exact document on June 1, 1995.

The “Vow of Poverty” is on a photocopy of the petitioner’s printed letterhead stationery. Printed at the bottom of the document are the name of the petitioner’s web site, “www.kabbalah.com,” and the telephone numbers of various centers throughout the United States and in other countries. The telephone number for the Boca Raton center has a 561 area code; the number for the center in San Diego begins with area code 858.

Several web sites (for example, http://www.telecomnetwork.net/area_codes_+.htm) track the history of the growing number of telephone area codes in the United States. Boca Raton’s area code was 407 in 1995; the 561 area code did not exist until May 13, 1996. Similarly, in San Diego, area code 858 did not replace 619 until June 12, 1999. Therefore, there is no way that the “Vow of Poverty” could have existed on June 1, 1995, the date printed on that document. An online database of World Wide Web domain names, <http://www.register.com>, in its listing for “www.kabbalah.com,” states: “Record created on 1997-06-05.”¹ This information suggests that the web site reference is yet another anachronism that discredits the June 1,

¹ According to <http://www.mit.edu/people/mkgray/growth/>, accessed June 29, 2005, there were fewer than 7,500 “dot com” web sites in existence as of June 1995. The very small number of web sites in 1995 does not, by itself, prove that www.kabbalah.com was not one of those sites; but given the reported 1997 registration date, the burden is on the petitioner to prove that its web site was operational in mid-1995.

1995 date on the "Vow of Poverty." The conclusion is inescapable that the "Vow of Poverty" document was created no earlier than 1999, possibly later, and backdated to 1995 with no indication that the document is a reproduction, re-creation, or repetition of information from an earlier document. The record, as it now stands, contains no evidence at all that would dissuade us from the conclusion that this document is fraudulent.

Especially given the overall lack of primary evidence (for which the director has already admonished the petitioner), the petitioner's submission of a newly created document with a false 1995 date raises very serious issues of credibility, not only about this one document, but about the record as a whole. (These issues are only compounded by the petitioner's apparent inability to decide whether the beneficiary resides in Queens or Los Angeles.) Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. 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, 586 (BIA 1988).

Until now, the petitioner had never been notified of the above derogatory information. The director must first afford the petitioner an opportunity for rebuttal, if the director intends to base a new denial (in whole or in part) on this derogatory information. This highlights the need, in this instance, for the petitioner to submit original, verifiable, contemporaneous documentation to *prove* that the petitioner lawfully houses workers at specific, named sites; that the beneficiary is among the workers thus housed; and that the petitioner has sufficient resources to meet the needs of those workers. Because of the highly questionable documents and statements submitted previously, after-the-fact *claims* cannot resolve these issues, whether or not those claims originate from ranking officials of the petitioning organization.

The unclear nature of the director's initial decision, coupled with very serious derogatory information of which the petitioner has not been advised pursuant to 8 C.F.R. § 103.2(b)(16)(i), lead us to conclude that the proper course of action is to remand the matter to the director for action consistent with the above discussion, followed by the issuance of a new decision.

Therefore, 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, regardless of the outcome, is to be certified to the Administrative Appeals Office for review.