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**U.S. Citizenship  
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CI

FILE: [REDACTED]  
WAC 03 231 51416

Office: CALIFORNIA SERVICE CENTER

Date: JUN 30 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:

SELF-REPRESENTED

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 appeal will be dismissed.

The petitioner is a Buddhist 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 monk. The director 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, that it had the ability to pay the beneficiary the proffered wage, or that it qualified as a bona fide nonprofit religious organization.

On appeal, the petitioner submits 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 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 first issue on appeal is whether the petitioner established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file a Form 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 August 8, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a monk throughout the two-year period immediately preceding that date.

The petitioner submitted no evidence of the beneficiary's prior work history with the petition.

In a request for evidence (RFE) dated July 13, 2004, the director instructed the petitioner to:

Provide evidence of the beneficiary's work history beginning August 8, 2003 and ending August 8, 2001 only. Provide a breakdown of duties performed in the religious occupation for an average week. Include the employer's name, specific job duties, the number of hours worked, remuneration, level of responsibility and who supervised the work. Ideally, this evidence should come in a way that shows monetary payment, such as W-2 forms, pay stubs, or other items showing the beneficiary received payment . . . However, you may also show payment through other forms of remuneration.

In response, the petitioner submitted a copy of a certificate from the [REDACTED] in the U.S.A., Inc. dated January 1, 2003. The certificate reflects that the organization had approved the beneficiary to be the assistant abbot of the monastery of [REDACTED] located at [REDACTED] in Ceres, California. The certificate also indicated that the beneficiary had been a monk for 21 years and had previously served as an assistant abbot. The petitioner submitted no documentary evidence to corroborate the beneficiary's work in the two years immediately preceding the filing of the visa petition. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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).

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. A religious undertaking may be unsalaried for workers 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, unless established that the position is a vocation in which one lives in a clearly unsalaried environment, generally salaried. To hold otherwise would be contrary to the intent of Congress.

On appeal, the petitioner submits a letter dated September 13, 2004 from the abbot of [REDACTED] who states:

[The beneficiary] entered the Buddhist monkhood over 26 years ago . . . He came here to [the] United States on 11/22/1998 after he resided and performed work continuously as Buddhist monk at our Temple. He has served as a Buddhist monk since his arrival until right now he has keeping [sic] his duty. In that capacity, he is authorized to and has done the following: training, practicing, and instructing monks and novice monks, perform chants and presides over funeral ceremonies, leads and participates in daily morning and evening chants, leads and participates in semi-weekly meditation sitting, perform monks and novice monks ordination ceremonies, walks daily food donation Procession, teaches Buddhist scripture, counsels individuals . . . And perform home blessings ceremonies at least twice a month. His work as a monk starts at 5:00 am and ends at 9:00 pm, daily, everyday since he has been with our temple.

According to the abbot, the temple will provide the beneficiary with food, room and board, robes and life insurance estimated at \$12,000 per year plus personal and incidental expenses estimated at approximately \$2,000 per year.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

The evidence of record before the director is insufficient to establish that the beneficiary was continuously employed as a monk for two full years prior to the filing of the visa petition.

The second issue to be discussed is whether the petitioner established that it had the ability to pay the beneficiary the proffered wage.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The evidence indicates that the beneficiary will be employed at the [REDACTED]. The petitioner submitted a copy of the Form 990, Return of Organization Exempt from Income Tax, for the years 2002 and 2003 for the [REDACTED]. The director rejected these documents as proof of the petitioner's ability to pay the proffered wage, noting the difference in the name and address on the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. The AAO will consider this evidence.

On appeal, the petitioner does not explain the difference in name for the two organizations, but states that the address on the Form I-360 is that of its abbot. The evidence of record suggests that the petitioner and the [REDACTED] are the same organization. Regardless, the record reflects the beneficiary's prospective U.S. employer is the [REDACTED]. The regulation requires the petitioner to establish that the beneficiary's prospective U.S. employer has the continuing ability to pay the beneficiary the proffered wage.

The evidence is sufficient to establish that the beneficiary's prospective U.S. employer has the ability to pay the beneficiary the proffered wage.

The remaining issue in this case is whether the petitioner has established that it is a bona fide nonprofit religious organization.

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) 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.

The petitioner initially submitted no evidence of this regulatory requirement. In his RFE, the director instructed the petitioner to:

Provide evidence that the U.S. religious organization qualifies as a nonprofit religious organization in the form of either:

- (a) The Internal Revenue Service – IRS 501(c)(3) Tax Exempt Certification; **or**
- (b) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations

If the [sic] you choose option (b) the documentation should include, at a minimum, a completed IRS Form 1023, the Schedule A supplement that applies to churches, and a copy of the organizing instrument of the church that contains a proper dissolution clause and that specifies the purpose of the organization.

In response, the petitioner submitted a copy of a use permit from Stanislaus County and a copy of a claim for welfare exemption from the county.

On appeal, the petitioner submits a copy of a March 5, 1986 letter from the California State Franchise Tax Board, exempting the petitioner from state franchise or income tax. The petitioner also submitted a copy of an October 3, 1986 letter from the IRS, granting the petitioner an advance ruling as a tax-exempt organization under section 501(c)(3) of the IRC as an organization described in sections 170(b)(1)(A)(vi) and 509(a)(1) of the IRC. The advance ruling ended on December 31, 1989. The petitioner submitted no further documentation from the IRS.

As the petitioner does not have a letter from the IRS granting it tax-exempt status as a bona fide nonprofit religious organization under section 501(c)(3) of the IRC, its other option is to comply with the provisions of 8 C.F.R. § 204.5(m)(3)(i)(B) by submitting the documentation that the IRS would require to determine that the entity is a religious organization.

The organization can establish this by submitting documentation that establishes the religious nature and purpose of the organization, such as brochures or other literature describing the religious purpose and nature of the activities of the organization. The necessary documentation is described in a memorandum from William R. Yates, Associate Director of Operation for CIS, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003). The documentation includes:

- (1) A properly completed IRS Form 1023,
  - (2) A properly completed Schedule A supplement, if applicable,
  - (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization,
- and

- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The above list is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B), cited above. The memorandum specifically states that the above materials are, collectively, the "minimum" documentation that can establish "the religious nature and purpose of the organization." Thus, for example, a petitioner cannot meet this burden by submitting only its articles of incorporation. Also, obviously, it is not enough merely for the petitioner to *submit* the documents listed above. The *content* of those documents must establish the religious purpose of the organization.

The director, prior to denying the petition, did not provide the petitioner with an opportunity to submit the materials outlined in Mr. Yates' memorandum, and thereby demonstrate that it qualifies as a bona fide nonprofit tax-exempt religious organization. This deficiency is not fatal to the director's decision, however, because (as discussed above) we have affirmed one of the other stated grounds for denial, which clearer evidence of qualifying tax-exempt status would not overcome.

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.