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U.S. Citizenship
and Immigration
Services

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FILE: EAC 03 262 50061 Office: VERMONT SERVICE CENTER Date: MAY 23 2005

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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

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 an ordained nun. The director determined that the petitioner had not established that the position qualified as that of a religious worker, that the beneficiary was qualified for the position, or that it has the ability to pay the beneficiary.

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 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).

According to the regulation at 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work in a religious occupation, profession, or vocation. The regulation at 8 C.F.R. § 204.5(m)(2) states, in pertinent part:

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to nuns, monks, and religious brothers and sisters.

In its letter of August 5, 2003, the petitioner described the beneficiary's duties in the proffered position:

In a typical day, a nun . . . will wake at 6:30 AM. She will then participate in morning chanting for one hour starting at 7 AM. After breakfast, she will engage in Dharma lecture. Dharma is the philosophy and practice of Buddhism. After lunch at 12 noon, she will teach Dharma classes until 6:00 PM. After a dinner break, all nuns and monks then engage in individual meditation and prayer until bedtime at 10 [PM].

On other days, [she] will gather goods for Dharma services in the morning and prepare the temple for services in the afternoon. She will also do community services work one or two morning[s] a week.

On Saturday morning, [she] . . . prepares for Sunday services by rehearsing with the orchestra. In the afternoon, she assists in internal administrative matters with the staff of the temple. Sunday has Dharma services in the morning which the nuns will assist in conducting and meeting with staff and practitioners in the afternoon.

The petitioner further stated that the Fokuangshan Monastery (FKSM) ordains both monks and nuns "to allow them to similarly serve around the world in teaching and Dharma propagation work." In the position, the beneficiary resides in the petitioner's temple where she is furnished with a stipend and room and board "which covers all her living expenses." The petitioner stated on the Internal Revenue Form 1023 that "[a]ll officers devote full time, without limitation of the time, to church work. No compensation is given, except the payment for necessary living expenses."

The evidence sufficiently establishes that the position is a religious vocation within the meaning of the statute and regulation.

The second issue to be addressed is whether the petitioner established that the beneficiary is qualified for the proffered position.

In a letter dated August 2, 1998, the abbot of the FKSM in Taiwan stated that, according to its records, the beneficiary has been a nun since 1990 and was ordained on June 9, 1991. The letter also stated that the beneficiary had participated in the conduct of Buddhist religious worship and other spiritual functions with the temple. The record contains a copy of an ordination certificate issued to the beneficiary on June 9, 1991, indicating that she had satisfied all training necessary to be ordained a nun. The evidence reflects that the beneficiary served with the FKSM as an ordained nun for several years before transferring to the petitioning organization to work in the proffered position.

The record sufficiently establishes that the beneficiary is qualified for the proffered position.

The director also determined that the petitioner had not established that it had the ability to pay the beneficiary.

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.

As discussed above, the petitioner stated that the beneficiary would receive a stipend in addition to full room and board. According to the petitioner, the beneficiary lives on the grounds of the temple as is typical of the Buddhist faith.

The petitioner submitted copies of unaudited financial statements and copies of its monthly bank statements for 2003. Unaudited financial reports and bank statements are insufficient evidence of the petitioner's ability to pay the beneficiary. However, the record contains sufficient credible evidence that the petitioner employed the beneficiary throughout the two years immediately prior to the filing of the instant petition, and compensated her by providing a stipend, room and board.

The record is sufficient to establish that the petitioner has the ability to pay the beneficiary, and that the beneficiary is otherwise qualified for the visa preference classification.

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 met that burden.

ORDER: The appeal is sustained. The petition is approved.