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FILE:

[REDACTED]  
EAC 04 010 51837

Office: VERMONT SERVICE CENTER

Date: **NOV 28 2005**

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.

*Mari Johnson*

Σ 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 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 minister of Won Buddhism. 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 or that it has the ability to pay the proffered wage.

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).

The first issue presented 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 October 2, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding that date.

In its September 8, 2003 letter accompanying the petition, the petitioner stated that the beneficiary had been assigned as a minister with the petitioning organization in January 2001, and had been serving full time in that position since February 2001. According to the petitioner:

[The beneficiary's] duties specifically include: performing missionary duties for youth groups, performing religious services for Sunday school, teaching and guiding meditation to youth groups and organizing educational and religious activities . . . In addition, [he] conducts weekly sermons to English speaking and Korean speaking congregations and provides individual and family counseling to the congregation. He also volunteers at the Won Institute of Graduate Studies. As a volunteer his duties include teaching moving meditation and Buddhist prayer to students and lay members.

The petitioner stated that ministers of its religion do not receive remuneration other than living expenses in the form of housing, food, clothing and allowances for expenses. The petitioner submitted a copy of a contract reflecting that it bought property for its organization, but submitted no evidence of the housing or other compensation that it stated that it provided to the beneficiary. 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)).

In a request for evidence (RFE) dated October 19, 2004, the director instructed the petitioner to:

Submit evidence that establishes that the beneficiary has the continuous two years full-time experience in the religious vocation, professional religious work, or other religious work for the period immediately prior to October 2, 2003. Such evidence may be statements which include all of the following information: detailed listing of the beneficiary's duties, the commencement and termination dates of employment, and the time spent per week by the beneficiary performing those duties . . . However, documentation to establish the employment dates, training, and salary of the beneficiary should consist of more than a statement. Objective documentary evidence, such as payroll records, tax return forms, contracts, etc., should be submitted to confirm the claimed employment dates and compensation for services performed.

In response, the petitioner submitted a "certificate of employment" stating that the beneficiary had served as a minister since January 2001, and reiterated that ministers of Won Buddhism are not traditionally provided compensation other than room, board, living necessities and "travel expenses." The petitioner, however, submitted a copy of a 2003 Form 1040, U.S. Individual Income Tax Return, on which the beneficiary reported \$2,400 in "stipends." The return is dated November 17, 2004, is unsigned and does not reflect that it was filed with the Internal Revenue Service (IRS). The petitioner also submitted copies of six checks made payable to the beneficiary in the amount of \$400 in June, August and October 2003, and \$600 in February, April and June 2004. The petitioner submitted no evidence of the lodging, food or clothing that it provided to the beneficiary. *Id.*

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. 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 to those in a religious vocation who, in accordance with their vocations, live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. The petitioner's employment of the beneficiary, as described by the petitioner, would appear to fall within this category. However, the petitioner has not provided sufficient evidence to establish that the position is a religious vocation as defined by the regulation. Furthermore, the petitioner must submit evidence to corroborate the beneficiary's employment, even in an unsalaried environment.

On appeal, the petitioner submits copies of the beneficiary's Form 1040 for the years 2001 and 2002, and resubmitted the 2003 return. We note that both returns are dated April 13, 2005 and do not reflect that they were filed with the IRS. Further, the evidence suggests that the beneficiary completed these forms for the singular purpose of providing them in support of this petition. They therefore do not provide contemporaneous evidence of the beneficiary's employment with the petitioning organization.

The petitioner also submits several documents (57 by counsel's count) attesting that the beneficiary worked full time for the petitioner since 2001, photographs that it states are of the beneficiary in front or inside of his residence that has been provided by the petitioner since 2001, photographs that the petitioner claims are of the beneficiary in his work as a minister, and copies of insurance documents for vehicles owned by the petitioner.

The photographs that allegedly depict the beneficiary in front of the residence that the petitioner claims to provide to him clearly indicate that it is at the corner of Parkdale and Abington. However, the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, and the beneficiary's Forms 1040 indicate that he lives at [REDACTED] in Glenside, California. The petitioner submitted no evidence to explain this contradiction. 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. 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). Based on the conflicting information regarding the beneficiary's actual place of residence, the petitioner has not established that it provides housing to the petitioner as part of any compensation package.

The petitioner also submits copies of documents that it states are the "weekly handouts" for its regular Sunday service, and a notarized "complete translation" of the April 28, 2002 bulletin and with the beneficiary's name "highlighted" in the other documents. The translation provided does not comply with the provisions of 8 C.F.R. § 103.2(b)(3), which requires that documents submitted in a foreign language "shall be accompanied by a full English translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." Because the petitioner failed to submit certified translations of the documents, they cannot serve as evidence to support the petitioner's claims. Accordingly, these documents are not probative and will not be accorded any weight in this proceeding.

The petitioner provided attestations of members of the temple who claim they are aware of the beneficiary's employment for the petitioner since 2001; however, they do not provide evidence of the terms of the beneficiary's employment with the petitioning organization. The petitioner states that it provides the beneficiary with lodging, food, clothing and allowances. The petitioner submitted evidence that the beneficiary was authorized to use vehicles owned by the petitioner and submitted copies of canceled checks reflecting that the beneficiary was paid occasionally during the latter part of 2003 and first half of 2004. Although the checks reflect the petitioner's name, we note that they also contain the name of [REDACTED] and an address of [REDACTED].

We note that the beneficiary is married and that his wife indicates on the tax returns that she is a "housewife." The petitioner did not allege and provided no evidence that its support of the beneficiary in the nature of clothing and transportation, for example, extended to his spouse. The petitioner's evidence is insufficient to establish that the beneficiary was not dependent upon secular employment for his support.

The evidence, therefore, does not establish that the beneficiary worked full time as a minister of [REDACTED] for two full years immediately preceding the filing of the visa petition.

The second issue is whether the petitioner established that it has the ability to pay 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.

As discussed previously, the petitioner stated that the beneficiary would be compensated with housing, food, clothing, expense allowances, and transportation.

As evidence of its ability to provide this compensation, the petitioner submitted evidence a copy of an unaudited financial statement for 2001 and evidence that the beneficiary is authorized to operate its vehicles. The petitioner submitted copies of checks issued to the beneficiary in June, August and October 2003, and February, April and June 2004. However, as discussed above, although the petitioner's name appears on the checks, the checks also contain the name of another individual and an address that has not been identified in the record as associated with the petitioning organization. On appeal, the petitioner submits copies of monthly checking account statements for January through March 2005, a copy of its savings passbook, and a copy of its March 2005 investment statement.

The above-cited regulation 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 primary evidence.

Accordingly, as the petitioner has failed to establish that it provided the beneficiary with the proffered compensation prior to the filing date of the petition and failed to submit any of the required types of primary evidence, it has not established that the petitioner had the continuing ability to pay the proffered wage as of the date the petition was filed.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.