



U.S. Citizenship
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Services

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FILE: [REDACTED]
WAC 03 062 56078

Office: CALIFORNIA SERVICE CENTER

Date: SEP 14 2005

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:

[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.

Maia Johnson

S Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted, the AAO's decision will be withdrawn and the petition will be remanded for further action and consideration.

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 religious instructor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a religious instructor immediately preceding the filing date of the petition. The director denied on other grounds as well. The AAO reversed the other grounds, but affirmed the director's finding regarding the beneficiary's work experience. The AAO also made an additional finding that the petitioner had failed to establish its ability to pay the beneficiary's proffered wage.

On motion, the petitioner submits a brief from counsel and several exhibits, some of them previously submitted.

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) 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." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on December 16, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a religious instructor throughout the two years immediately prior to that date.

8 C.F.R. § 204.5(g)(2) states that 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. Counsel argues, on motion, that this section does not apply to special immigrant religious worker petitions, but such petitions are employment-based immigrant petitions that require an offer of employment and, thus, clearly fall within the plain language of the regulation.

Counsel cites various documents that indicate that Citizenship and Immigration Services (CIS) is contemplating an amendment to the existing regulations at 8 C.F.R. § 204.5(g)(2). Counsel asserts that these documents prove that CIS intends to “do away with” the ability to pay requirement, and that continued enforcement of those regulations is therefore “unlawful and raises serious constitutional questions.” We categorically reject this argument for several reasons. First of all, every document cited by counsel establishes CIS’ intent to *amend*, rather than outright *abolish*, the regulations in question. More fundamentally, a regulatory change takes effect only after it has been published as a final or interim rule in the *Federal Register*. Until that time, the regulation that precedes it remains in full force. In this instance, to date there has been no published change to 8 C.F.R. § 204.5(g)(2), even as a proposed rule. There is only the public declaration that the regulation *may change at some future time*. Counsel cites no statute, regulation, or case law to indicate that such a declaration of intent immediately invalidates the current version of the rule under discussion.

On motion, counsel argues that the AAO failed to give sufficient consideration to documents that show that the beneficiary was paid throughout the qualifying period. These documents include tax documents and printouts from the Social Security Administration. Also submitted on motion are copies of paychecks further corroborating these payments. Counsel argues that, because these financial documents prove payment for services rendered, they therefore establish that the beneficiary worked as claimed, and that the petitioner was able to make these payments.

Upon consideration, we concur with counsel that these documents did not receive due consideration when first submitted. If the petitioner did in fact pay the beneficiary on a monthly basis throughout the qualifying period, then the reasonable conclusion is that the beneficiary worked as claimed, and that the petitioner was obviously able to make the payments because it did, in fact, make those payments.

The petitioner has, thus, overcome the remaining stated grounds for denial. During our review of the record pursuant to the motion, however, additional factors have surfaced which we cannot ignore. Counsel cites a memorandum from William R. Yates, Associate Director of Operations, *Requests for Evidence (RFE) and Notices of Intent to Deny (NOID)* (February 16, 2005). In that memorandum, Mr. ██████ states: “the standard to be met by the petitioner or applicant is ‘preponderance of the evidence,’ which means that the matter asserted is more likely than not to be true. Filings are not required to demonstrate eligibility beyond a reasonable doubt.” Counsel asserts that the petitioner has submitted “ample evidence” to establish that the beneficiary worked the full two years, and that the adverse decisions improperly rely on a “reasonable doubt” standard rather than a “preponderance” standard. Counsel further quotes from the 2005 memorandum:

Mr. ██████ further instructs that “if the record is complete with respect to all of the required initial evidence as specified in the regulations and on the application or petition and accompanying instructions, the USCIS adjudicator is not required to issue an RFE to obtain further documentation to support an approval based on that record. [Rather,] the case should be approved without RFE or NOID.” This matter should therefore have been approved on February 17, 2004 and the appeal of the same should have been sustained on March 11, 2005.

The bracketed “[Rather]” marks counsel’s removal of almost an entire paragraph. The last sentence quoted by counsel reads, in full: “Therefore, *when a case is approvable* based on initial evidence, and there is not evidence justifying a particular concern to support a RFE or a referral to Fraud Detection and National Security (FDNS), the case should be approved without RFE or NOID” (emphasis added). In a passage preceding the quoted passage, Mr. [REDACTED] again makes it clear that he is referring to “a case in which all of the required evidence has been submitted, *and the case is approvable*” (emphasis added). By removing these caveats, counsel has taken the quotation out of context to imply that every “complete” record of proceeding warrants approval of the petition or application, when in fact Mr. Yates’ memorandum says nothing of the sort.

In this instance, the granting of the motion to reopen lays the entire record of proceeding open to review. Following this review, the record of proceeding appears to be reasonably complete with regard to required initial evidence, but this evidence must be examined. It is this examination of the evidence that leads us to conclude that a major issue remains unresolved, thus preventing the approval of the petition.

As part of the present petition, on September 18, 2003, the petitioner submitted a summary of the beneficiary’s “Employment History.” This document indicates that the beneficiary worked as a “Buddhist Monk” at “Kooksung Temple, Seoul, Korea,” from March 1989 to July 1996. This is consistent with prior claims regarding the beneficiary’s past experience.

Several years earlier, on April 3, 1997, the same petitioner, represented by the same law firm that filed the present motion, filed an earlier petition (receipt number WAC-97-127-52197) on behalf of the same beneficiary. In support of the 1997 petition, the petitioner submitted a copy of the beneficiary’s ordination certificate, purportedly signed by Soon Sung Ha, “Executive Chief of the Korean Buddhist.” The certificate indicates that the beneficiary was ordained as a monk on October 10, 1988, at “Yongju Temple,” and that the beneficiary’s “Ordination Teacher” was “Cheong Ha.” The petitioner also submitted a copy of a “Certificate of Experience,” purportedly signed by “Dr. Soon Sung Ha (Cheong Ha),” identified as head priest of Kooksung Temple, located at 647-53 Bongchun-dong, Kwanak-ku, Seoul, Korea. The “Certificate of Experience” indicates that the beneficiary had been a “Buddhist Monk” at Kooksung Temple from March 1989 to the “present,” i.e., March 10, 1997.

The petition was approved on May 2, 1997. Following the approval of the 1997 petition, the beneficiary completed Form G-325A, Biographic Information, as part of his application to adjust status (the receipt number for the adjustment application is WAC-97-177-50302). Instructions on Form G-325A instructed the beneficiary to list his employment over the preceding five years (June 1992 to June 1997). The beneficiary stated that he had been a “visitor” since July 1996, and that he had worked as a “Buddhist Monk” at “Kooksung Temple” since March 1989. The beneficiary identified no other former employers. Although Form G-325A instructs applicants to provide the full address of employers, the beneficiary did not do so, stating only that Kooksung Temple was in Seoul.

Further investigation revealed that there is a Buddhist temple at the above address, but it is not called Kooksung Temple; it has been called Yongjoo Temple since 1965. (It appears that “Yongjoo Temple” is a variant spelling of “Yongju Temple,” mentioned above.) Thus, investigation failed to verify the existence of Kooksung Temple at the address provided. At Yongjoo Temple, the investigators spoke to Soon Sung Ha, the priest whose name appears on key documents identified above. In a statement dated November 30, 1999, Soon Sung Ha (also known as “Cheong Ha”) did not verify the beneficiary’s claims of past employment. Instead, he indicated that the beneficiary “visited . . . my temple” on one occasion “several years ago. . . . But

I do not know who he is. I certainly confirm that the above person never worked as a priest at this temple.” Because Soon Sung Ha (Cheong Ha) was also supposedly the beneficiary’s ordination teacher, the beneficiary’s claimed ordination as a monk is seriously in question.

Investigators obtained a copy of the beneficiary’s passport application, dated June 30, 1992, which indicated that the petitioner worked at [REDACTED]. The beneficiary’s employment at a stain company in 1992 further contradicts his claim to have been a Buddhist monk, and only a Buddhist monk, since 1989.

On August 31, 2003, the director issued a notice of intent to revoke the approval of the 1997 petition, based on the above information. The petitioner has, therefore, been aware of the above information for two years. We can find no evidence that the petitioner responded to the notice of intent to revoke, or that the director ever followed up on this notice, either adversely (by revoking the approval of the 1997 petition) or favorably (by proceeding with the adjudication of the beneficiary’s adjustment application). Thus, the 1997 petition remains administratively open; we urge the director to take the necessary action to resolve the matter.

The petitioner’s prior submission of highly suspicious documentation on behalf of this beneficiary raises credibility issues that simply cannot be ignored when weighing the preponderance of evidence. 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. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988).¹

The director must issue a new decision, taking the above fully into account. Any rebuttal evidence offered by the petitioner must be at least as credible and verifiable as the investigators’ visit to the claimed site of Kooksung Temple and the comments, obtained in person, from the individual named as the beneficiary’s former employer and ordination teacher.

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.

¹ The issue also arises that the beneficiary, by claiming employment at the apparently nonexistent Kooksung Temple and by withholding material information about his employment for [REDACTED], has apparently sought to procure an immigration benefit by fraud or misrepresentation. This would make him inadmissible under section 212(a)(6)(C)(i) of the Act. The subsequent filing of a second petition, which places the suspicious claims and documents outside the two-year qualifying period, cannot remedy this situation or minimize its gravity, because if the beneficiary has provided false documents or information at *any* time, in relation to *any* petition or application, then it will *always* be the case that the beneficiary *has sought* to procure a benefit by fraud or misrepresentation. The clear statutory reference to the alien’s past activities is not neutralized by the filing of new petitions or applications, or by the withdrawal of the petition or application for which the false documents or information pertains.