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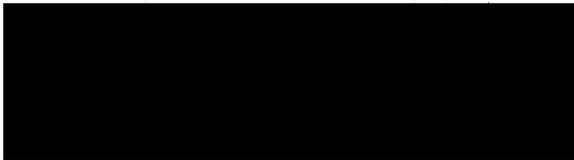
Office: CALIFORNIA SERVICE CENTER

Date: SEP 28 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:



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

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 appeal will be dismissed.

The petitioner is "a Buddhist organization for various Buddhist assembly, services, education and activities." It seeks classification of 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 be employed as the organization's "Editor and Free Medical Program Organizer." The director denied the petition, determining that the petitioner had failed to establish that the beneficiary had the requisite two years experience in a religious occupation prior to the filing of the petition. The director further found that the petitioner failed to establish its ability to pay the beneficiary the proffered salary.

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 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) echoes the above statutory language, and states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file an 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 first issue to be examined is whether the petitioner has demonstrated that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for at least the two years immediately preceding the filing of the petition.

8 C.F.R. § 204.5(m)(1) states, in pertinent part, that "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 petition was filed on June 26, 2003. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation from at least June 26, 2001.

In a letter dated June 11, 2003, [REDACTED] Chief Executive Officer of the petitioning organization, states:

[The beneficiary] has made the vow of taking refuge in the Triple Gem in April 8, 1990, and has served at [REDACTED] Temple, our Taiwan affiliate Temple with the same religious denomination, as Volunteer worker/Buddhism Instructor since July 30, 1990 without interruption. He worked as Young Buddhism Class Instructor to direct the youth to learn and to understand the Buddhism, the characteristic and education of Buddha in order to apply the Buddhism spirit in the education and the daily life. He also acted as leader of Buddhist Sutra reading and Instrument Player on Medicine Buddha's Service. He organized the Temple's daily activities and services. He edited audio and videocassette tapes, published monthly magazine to preach Buddhism to the followers. He directed the preparation and purchase of all the necessary materials for decoration of the Service hall before the Weekly Service held every Sunday. He devoted 41 hours each week in the religious profession to preach the Buddhism in the past 4 years without interruption.

With [the beneficiary's] love and devotion to the Buddha, we are in need of his service at our center to preach the Buddhism and to provide Free Medical Treatment to the poor or elderly families. As compensation for his service, we will provide him free room and board, traveling expenses and \$100 weekly allowance.

The statement that the petitioner is "in need" of the beneficiary's services and that it "will provide" the beneficiary with free room and board and additional expenses, implies that these terms cover future employment, rather than terms already in effect.

The petitioner also submitted a letter from [REDACTED] the Venerable Master of Pu Hou Pai Gi Temple which indicates that the beneficiary "has been [a] Volunteer Member and worked voluntarily in our Temple from July 30, 1990 through August 17, 2002" and that the beneficiary "spent 23 hours each week in the volunteer work"

In a letter dated June 25, 2004, submitted in response to the director's request for evidence, [REDACTED] provides the following information related to the beneficiary's employment:

Work History:

During the period of June 26, 2001 through June 26, 2003, the beneficiary . . . worked at [REDACTED] Temple as Buddhism Instructor/Program Organizer. He was a volunteer worker worked 23 hours per week since July 30, 1990.

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During the period February 27, 1998 – August 31, 2002, he also worked for Dentsply Int'l Inc. Taiwan Branch as Business Development Supervisor.

* * *

Proffered Position:

Beneficiary is presently working for our Center, as Editor and Free Medical Program Organizer. He works 40 hours per week.

* * *

Employment History:

* * *

Feb 27, 1998 – Aug 31, 2002

Business Development Supervisor at Dentsply Int'l Inc. Taiwan Branch

July 1990 – July 2003

Volunteer worker/Buddhism Instructor/Program Organizer at Pu Hou Pai Gi Temple

August 2003 to present

Buddhism Instructor/Program Organizer (Religious Worker) at Tze Hung Buddhist Center

In his denial, the director noted that the beneficiary's positions during the two-year period preceding the filing of the petition included both voluntary employment and secular employment. Accordingly, the director determined the petitioner could not establish that the beneficiary had the requisite two years of continuous experience in the religious occupation for which classification is sought.

The director's finding that unpaid volunteer work cannot constitute qualifying experience appears to overreach; there may be limited circumstances in which unpaid volunteer work may constitute qualifying experience. That being said, the burden of proof remains on the petitioner to establish that the claimed work took place continuously.

On appeal, counsel acknowledges that the beneficiary did not work full-time between the period June 26, 2001 to June 26, 2003, but argues that the beneficiary's work during this period is equivalent to two years full time working experience because the beneficiary did work "23 hours per week" between the period June 26, 1999 through June 26, 2003. Counsel also states that because the beneficiary was previously approved as an R-1 nonimmigrant the director's findings in this instance have "erroneously challenged" the beneficiary's eligibility. We are not persuaded by any of counsel's arguments.

First, we note that there is a significant difference between nonimmigrant R-1 visa classification, which allows an alien to enter the United States temporarily, and an immigrant I-360 visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. Cf. §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; *see also* § 316 of the Act, 8 U.S.C. § 1427. Because the eligibility requirements for each petition are different, the fact that the beneficiary may have had a prior nonimmigrant visa petition approved, does not relieve the petitioner from meeting the evidentiary and eligibility requirements of the instant petition.

Second, as clearly indicated in the statute and the regulation, the two-year period in question, is the two-year period prior to the filing of the petition. In this instance, the two-year period began in June 2001. Thus, counsel's attempt to add the beneficiary's work experience prior to June 2001 in order to gain two-years experience is fruitless.

Also of concern is that the beneficiary was engaged in outside employment. In *Matter of B*, 3 I&N Dec. 162 (CO 1948), in a discussion of whether an alien worked continuously as a minister, one consideration was that the alien did not take up any other occupation or vocation. Here, the petitioner asserts that the beneficiary worked as a Business Development Supervisor for fourteen months during the qualifying period. As previously noted, an alien principally employed in a secular job or jobs is not entitled to status as a special immigrant religious worker merely by virtue of performing a small amount of work on behalf of a church or other religious entity.

Moreover, the regulations at 8 C.F.R. § 204.5(m)(1) and (3)(ii)(A) require that the beneficiary must have carried on *the* vocation or occupation, rather than *a* vocation or occupation, indicating that the work performed during the qualifying period should be substantially similar to the intended future religious work. The underlying statute, at section 101(a)(27)(C)(iii), requires that the alien "has been carrying on such . . . work" throughout the qualifying period. An alien who seeks to work as an "editor and free medical program organizer" has not been carrying on "such work" if employed as a "Buddhism instructor" and "Business Development Supervisor" for much of the preceding two years.

In addition to the above discussion, we note that the record contains numerous discrepancies which call the petitioner's claims into question. In a letter dated June 20, 2001, the petitioner indicated that it was "establishing a branch temple in Diamond Bar . . . California in June of 2001." However, the information contained in the record reflects that the branch was not established in Diamond Bar until January 6, 2003 when a rental agreement was signed for the property at [REDACTED], [REDACTED] California. All other documents, such as a letter from the IRS, and bank statements which list the Diamond Bar address, are all dated after January 2003. The petitioner's 2002 list of activities, registration sheet, and other bulletins show the petitioner's address prior to 2003 as being located at [REDACTED], Anaheim, California. However, the paychecks submitted by the petitioner as evidence of the beneficiary's employment, which are dated between 2003 and 2004, are all issued from the Rainview Court address.

Based upon the above discussion, we find the evidence in the record is not only insufficient but also contradictory. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Because of the conflicting information it is not clear where the beneficiary has been and will be employed, which branch has been paying the beneficiary for work at which location, and whether the petitioner actually exists. We, therefore, agree with the director's determination that the petitioner has failed to establish that the beneficiary has been carrying on such work continuously for at least the two-year period prior to the time of filing.

The remaining issue is whether the petitioner has the ability to pay the beneficiary's proffered wage. The regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to demonstrate how the alien will be paid or

remunerated if the alien will work in a professional religious capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support.

The petitioner indicated that the beneficiary would receive a weekly allowance of \$100 per week, plus free room and board. In denying the petition, the director cited the beneficiary's past history of "secular and volunteer employment" and found the petitioner failed to establish that the beneficiary will not be dependent on supplemental employment or solicitation of funds for support. We note that the above regulation requires only that the beneficiary will not be *solely* dependent on supplemental employment or solicitation of funds for support. The fact that the outside employment ended nearly one year prior to the filing of the instant petition, and the petitioner's assertion that the beneficiary would receive a salary, room, and board, sufficiently demonstrates that the beneficiary would not be solely dependent on income from other sources. Pursuant to the above facts, the director's finding regarding the job offer cannot stand.

While the determination of an individual's status or duties within a religious organization is not under the purview of CIS, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

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.

ORDER: The appeal is dismissed.