



U.S. Citizenship  
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FILE: [REDACTED]  
EAC 01 177 55629

Office: VERMONT SERVICE CENTER

Date: SEP 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:



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 initially denied by the Director, Vermont Service Center for abandonment. The director granted a subsequent motion to reopen and again denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner, a Hindu organization, 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 writer and instructor. The director determined that the petitioner had not established that the position qualifies as that of a religious worker.

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 issue presented on appeal is whether the petitioner established that the position qualifies as that of a religious worker.

Pursuant 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 as a religious worker. To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all

employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

In its letter of April 21, 2001, the petitioner described the duties of the proffered position as follows:

To provide spiritual guidance, prayer and counseling to the members of our Hindu organization; to plan, organize and direct programs designed to promote religious education; to teach religious studies to the members and preaching [to] the members; to serve as a counselor to the members with family problems, academic problems, being a mediator between the students and parents or the academic institution; to hold daily meetings with our administration [sic] members . . . to provide updates on activities, concerns and new suggestions; to compile lists of absent members, and contact and visit them; to write religious articles to preach and discuss spiritual issues on our quarterly magazines called "Sattam (the Truth)" to conduct in worship services while discussing about the Holy Book Gita.

The petitioner stated that the beneficiary would be expected to work approximately 40 hours per week, and would be compensated at the rate of \$300 per week.

The director stated that the petitioner had not established that the position required any specific religious learning "above and beyond that of a dedicated and caring member of the religious organization." We withdraw this statement by the director. Nothing in the statute or regulations requires specific religious training for this religious occupation. Furthermore, in its letter of March 14, 2002, the petitioner stated, "To successfully perform the position, the Church requires at least the bachelor's degree, or a [sic] four years of training education in a Hindu religious institution, together with at least two (2) years experience as a Hindu religious instructor or writer."

The evidence sufficiently establishes that the duties of the proposed position are directly related to the petitioner's religious creed and practice, and that the position qualifies as a religious occupation within the meaning of the statute and regulation.

Nevertheless, the case may not be approved as the record now stands, and it will be remanded to the director to enter a new decision.

The record does not establish that the beneficiary was continuously employed as a religious writer and instructor for two full years preceding 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 April 25, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a religious writer and instructor throughout the two-year period immediately preceding that date.

In its letter of April 21, 2001, the petitioner stated:

[The beneficiary] has been a member of our organization . . . from July 2000 to the present time, as a member and as a religious instructor and writer. Prior to that, [the beneficiary] had been a member of [redacted] (denomination) in Jamaica and Queens from April 1996 through July 2000, immediately before joining our organization. [The beneficiary] had been not only a member of that organization but also acted as a distinguished religious teacher and writer.

In its March 14, 2002 letter, the petitioner stated:

[The beneficiary's] work was already commenced on August 2002, and this will go on permanently. [The beneficiary] will not be paid until the approval of his permanent residency application. Until then, his 40 hour work has been made and will be made on a no-salaried basis.

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.

In the rare case where volunteer work might constitute prior qualifying experience, the petitioner must establish that the beneficiary, while continuously and primarily engaged in the traditional religious occupation, was self-sufficient or that his or her financial well being was clearly maintained by means other than secular employment.

The petitioner submitted no evidence to corroborate the beneficiary's employment during the qualifying two-year period. 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)). Further, the petitioner submitted no evidence that the beneficiary did not rely upon secular employment for his support.

On remand, the director should give the petitioner an opportunity to establish that the beneficiary was continuously employed as a religious instructor and writer for two full years immediately preceding the filing of the visa petition.

Additionally, the record does not establish that the petitioner has extended a qualifying job offer to the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

*Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

Although the petitioner states that it will compensate the beneficiary at the rate of \$300 per week, the record reflects that the petitioner has no other paid employees. In his cover letter submitted with the response to the director's request for evidence (RFE) dated January 14, 2002, the petitioner's prior counsel stated that the

petitioner had no salaried employees, and that all workers with the petitioning organization, both religious and non-religious were volunteers. On its year 2000 Form 990, Return of Organization Exempt from Income Tax, the petitioner listed four "officers, directors, trustees, and key employees," and indicated that none received any form of compensation. Further, the Form 990 does not reflect that any of the individuals devoted more than 20 hours per week to work for the petitioning organization. This raises the question as to whether the petitioner can and will offer full-time, paid employment to the beneficiary.

On remand, the director should give the petitioner an opportunity to establish that the beneficiary will not be solely dependent on supplemental employment or the solicitation of funds for his support.

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, if adverse to the petitioner, is to be certified to the AAO for review.