

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



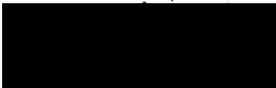
U.S. Citizenship  
and Immigration  
Services

C1

**PUBLIC COPY**



FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

JAN 20 2006

IN RE:

Petitioner:

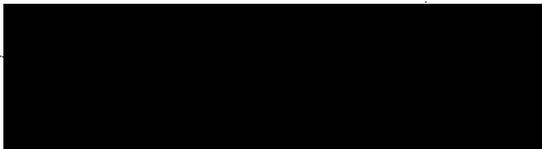
Beneficiary:



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, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a [REDACTED] Consciousness 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 "assisting missionary." The director determined that the beneficiary's secular work at a motel interrupted the continuity of the beneficiary's religious work, and demonstrated the beneficiary's reliance on supplemental employment.

On appeal, counsel offers brief comments and asserts that a brief will be forthcoming within 30 days. To date, over a year after the filing of the appeal, the record contains no further substantive submission from the petitioner. We therefore consider the record to be complete as it now stands.

The beneficiary has indicated, in correspondence dated December 2, 2005, that counsel "retired and is no longer representing me." The record, however, contains no confirmation from either the petitioner or the attorney. We cannot recognize the beneficiary's letter, because the beneficiary is not an affected party pursuant to 8 C.F.R. § 103.3(a)(1)(iii). Therefore, we continue to recognize attorney Robynn L. Allveri as the attorney of record. The term "counsel" shall herein refer collectively to [REDACTED] and to various other attorneys in her firm who have provided arguments at various stages of this proceeding.

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

*Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the

visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 582.

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 October 4, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an “assisting missionary” throughout the two years immediately prior to that date.

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

*Job offer.* The letter from the authorized official of the religious organization in the United States must also state . . . 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. In doubtful cases, additional evidence such as bank letters,

recent audits, church membership figures, and/or the number of individuals currently receiving compensation may be requested.

In a letter accompanying the initial filing of the petition, Charles P. Cooksey, president of the petitioning temple, states: "Since April of 1998, [the beneficiary] has been an Assisting Missionary at [the petitioning temple]. . . . As Assisting Missionary, [the beneficiary] has regularly and continuously performed weekend Pujas (religious worship) at the temple" and other listed duties. Mr. Cooksey states that the beneficiary "will be staying at the residential quarters attached to the Temple premises and will receive approximately \$1250 per month in shelter, food, clothing and transportation expenses." This passage refers only to what the petitioner "will" provide to the beneficiary; Mr. Cooksey does not specify whether the petitioner has already provided these considerations to the beneficiary.

A copy of the petitioner's September-October 2002 newsletter includes the beneficiary's name in a list of over 100 donors to the temple, there is no indication that the beneficiary is a temple employee. The newsletter also includes a "Financial Report: July - August '02," showing the following expenses:

Mortgage	\$3,252	Ads/Office	\$1,786
Utilities	2,626	Repairs/Const.	440
Devotee Mtnce.	1,216	Vehicles/Ins.	1,100
Deity Worship	6,962	TOTAL EXPENSES	17,382

None of the above expenses are clearly related to employee payroll. The line item for "Devotee Maintenance" approaches the estimate of the beneficiary's monthly expenses, but this assumes that "devotee" means "employee" and that the beneficiary is the only individual covered by those expenses. Thus, the newsletter links the beneficiary to the temple immediately prior to the filing date but it does not contain persuasive evidence of the beneficiary's experience.

On April 16, 2003, the director instructed the petitioner to submit additional evidence of the beneficiary's past experience. In response, the petitioner has submitted photographs of what are said to be the beneficiary's living quarters at the temple, and a photograph of the temple's bus, said to be the beneficiary's means of transportation. Mr. Cooksey states that the beneficiary "has been compensated in the form of shelter, food, clothing and transportation expenses which is equivalent to about \$1250- per month."

The petitioner submits copies of notices relating to nonimmigrant visa petitions previously filed on the beneficiary's behalf. These documents show that the beneficiary held an H-1B1 nonimmigrant visa to work for Romney Ventures from May 18, 1999 to October 16, 2001, and that Supai Properties had filed a nonimmigrant visa petition on October 15, 2001, which was denied on August 8, 2002, shortly before the filing of the present special immigrant visa petition.

The director approved the petition on July 30, 2003, and on August 28, 2003, the beneficiary filed a Form I-485 adjustment application. This application and its related documents are part of the record of proceeding within the beneficiary's alien file. As part of the adjustment application, the petitioner submitted Form G-325A, Biographic Information. Under "Applicant's Residence Last Five Years," the beneficiary indicated

that he had lived at [REDACTED] from April 1998 to August 2002, and at [REDACTED] since August 2002. The [REDACTED] address is also listed as the beneficiary's address on the Form I-360 petition. The record contains no evidence that the petitioner owns or leases the properties at either 134 or [REDACTED] Seligman. The petitioner's own address, as stated on the Form I-360 petition, is [REDACTED] Chandler, Arizona, and therefore the beneficiary did not claim to reside in quarters "attached to the Temple premises" as Mr. Cooksey had previously described.

Under "Applicant's Employment Last Five Years," the beneficiary stated that he had been an assistant missionary for the petitioner since April 1998; he claimed no other employment, even though two other employers had obtained or sought nonimmigrant visas on his behalf during that time.

During the adjudication of the beneficiary's adjustment application, on September 18, 2003, the director instructed the beneficiary to "Submit copies of your three most recent pay stub [sic] and copies of your Form W-2 for the following tax years: 2001 and 2002." In response, the beneficiary has submitted copies of three Form 1099-MISC Miscellaneous Income statements, indicating that Supai Properties paid the beneficiary \$7,500.00 in 2001 and \$9,867.00 in 2002, and International Surfacing Systems paid the beneficiary \$1,351.47 in 2002. The photocopied forms show the handwritten notation "worked part-time at Supai Motel."

The Form 1099-MISC from International Surfacing Systems identifies the recipient as "VANTH S SHETTY DBA SUPAI MOTEL." While the beneficiary's first name is not spelled "Vanth," the "identification number" on the form matches the beneficiary's Social Security number, and the mailing address is a post office box that the beneficiary has identified as his own. Finally, the beneficiary has, by submitting this document, indicated that it pertains to him. We conclude, therefore, that "Vanth" is simply a misspelling of the beneficiary's name, and not a reference to a different person.

The beneficiary has also submitted a new letter from [REDACTED] who indicates that the beneficiary "is staying in an attached apartment to the temple." As recently as December 2, 2005, the beneficiary has continued to state his address as [REDACTED] very near to the addresses of both Supai Motel and Romney Ventures. The letterhead on [REDACTED]'s letter shows the address of a different temple, located at [REDACTED] the Tucson address also appears on the February 2002 Corporation Annual Report of ISKCON of Arizona, Inc., which identifies [REDACTED] as president of the Tucson temple. Documents in the record appear to indicate that the petitioning temple in Chandler is a separate corporation (which would make the Tucson temple's annual report irrelevant for the purposes for which it was submitted). The implication is that [REDACTED] is president of both temples.

On November 18, 2003, the director issued a notice of intent to revoke. The director reissued this notice on January 29, 2004, after the director was unable to locate the petitioner's response to the November notice. In this notice, the director stated that the record contains no evidence to support [REDACTED] claims to have compensated the beneficiary. The director also noted the beneficiary's documented outside employment, and stated that "the petitioner has failed to provide convincing evidence that the beneficiary will not continue his need for supplemental employment in the future as well."

In response, counsel states: ██████████ stated [the beneficiary] worked an average of 38 hours a week and submitted a weekly schedule of duties." The director did not deny that ██████████ had made these claims. Rather, the director stated that there is no documentary evidence to support ██████████ claims.

Counsel also states that the Forms 1099-MISC do not show that the beneficiary has relied, or will rely, solely on supplemental income, because "it is clear that primary expenses (shelter, food, clothing and transportation) were provided by . . . the petitioner." Contrary to counsel's assertion, it is far from "clear" that the petitioner provided these necessities as claimed. Photographs of an apartment and a bus do not demonstrate the beneficiary's use, continuous or otherwise, of the apartment or bus.

The director revoked the approval of the petition, stating that the beneficiary's admitted work at the Supai Motel shows that the beneficiary's work at the temple was not continuous, and that the beneficiary has had to supplement his income with secular employment.

On appeal, counsel argues that "Nothing in the applicable regulations or caselaw states that prior religious employment be full-time or salaried." Counsel here fails to consider *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980), in which the Board of Immigration Appeals found that an alien's part-time, unpaid volunteer work does not count as continuous experience. Also, as counsel has previously acknowledged, in this case the petitioner claims that the beneficiary did work full-time, and did receive compensation (albeit in the form of food, lodging, etc., rather than as a cash wage or salary). Because the petitioner has claimed that the beneficiary's work was full-time and compensated, it is not unreasonable to expect the petitioner to substantiate those claims.

Counsel states the beneficiary "never failed to maintain a full-time schedule of religious work" and "was remunerated for his work in the form of room & board, transportation, and basic living expenses. Evidence of the temple's residential quarters and employee van were provided." The director had already stated that ██████████ unsupported statements could not suffice to establish eligibility. The photographs have negligible probative value because, as noted above, the fact that the temple owns a bus does not compel the conclusion that the beneficiary used that vehicle regularly. The photographs of an apartment do not even prove that the Temple owns the apartment, let alone that the beneficiary has ever resided there.

With regard to the apartment, we note that ██████████ has repeatedly indicated that the beneficiary lived in an apartment on the temple's premises. The beneficiary, however, has consistently indicated that he resides at 203 W. Chino (sometimes stated as E. Chino), Seligman, Arizona. Because the petitioning temple is not in Seligman, these two claims are facially contradictory. 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. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho* at 582, 586.

Because the beneficiary's housing has supposedly been a major component of his past compensation, the issue of where the beneficiary lived is material, even central, to the petition. Because ██████████ and the beneficiary contradict one another on this critical issue, we have ample grounds to concur with the director's

finding that [REDACTED] unsupported claims do not meet the petitioner's burden of proof. 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)).

Counsel argues that the beneficiary's employment at Supai Motel was only part-time, and that the beneficiary was not "solely dependent" on employment at the motel because his "primary needs were all covered by the religious employer." The record contains nothing from the Supai Motel itself to establish the nature or extent of the beneficiary's work there. The only objective reference in the record that gives some clue is the Form 1099-MISC from International Surfacing Systems, which refers to "VANTH S SHETTY DBA SUPAI MOTEL." We note that "DBA" is a standard abbreviation for "doing business as." If the beneficiary was, as he claims, merely a part-time worker at Supai Motel, it is not clear why International Surfacing Systems would refer to the beneficiary "doing business as" Supai Motel. Rather, the reference implies that the beneficiary owned or operated the Supai Motel.<sup>1</sup>

The petitioner and beneficiary appear to have significantly downplayed the extent of the beneficiary's involvement in the motel business and other secular work during the qualifying period. Apart from "doing business as" Supai Motel, materials in the record show that the beneficiary had an H-1B nonimmigrant visa sponsored by Romney Ventures of 122 W. Chino, Seligman, just down the street from his own place of residence; yet the beneficiary failed to mention Romney Ventures when required to list his previous five years of employment on Form G-325A (which the beneficiary signed under penalty of perjury).

While de-emphasizing the beneficiary's secular work for a number of employers, the petitioner appears to have exaggerated the beneficiary's religious work at the petitioning temple. There is no reliable evidence that the beneficiary ever lived on the temple's premises, while the record shows considerable grounds to doubt that claim. We cannot conclude, with any confidence, that the beneficiary has worked full-time for the petitioning temple, or that he is likely to do so in the future. It appears, instead, that the beneficiary has devoted his efforts primarily to the hotel business and other pursuits in Seligman, while worshipping and perhaps occasionally volunteering at the petitioning temple. The complete absence of documentary evidence of the beneficiary's work at the temple is of particular concern when viewed in light of the inconsistencies regarding the beneficiary's known, documented secular work. Given the relevant case law in *Matter of Ho*, we must view inconsistent, contradictory, or false claims as affecting the overall integrity of the record, rather than in isolation. The contradictions and irregularities in the record of proceeding justify the director's decision to revoke the approval of the petition.

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 not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

<sup>1</sup> We note, here, that the Supai Motel is located at [REDACTED] which is the address provided as the beneficiary's own residential address prior to August 2002.