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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **JUN 27 2006**
WAC 05 079 53019

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a Taoist 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. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition.

On appeal, the petitioner submits copies of payroll documents and information about the beneficiary's business activity.

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 January 26, 2005. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a minister throughout the two years immediately prior to that date.

The petitioner's initial submission includes a translated copy of a Certificate of Ordination, showing that the beneficiary has been "authorized to propagate Taoism" since March 30, 1992. A Certification of Appointment indicates that the petitioner worked as a lecturer at Chung Yi Temple in Taiwan from March 1992 to March 1999. The petitioner's initial submission does not include any evidence from any entity that employed the beneficiary during the qualifying period. The petitioner does submit documents showing that R-1 nonimmigrant religious worker visas were approved for the beneficiary to work at the [REDACTED] first in East Stroudsburg, Pennsylvania from March 1, 2000 to February 28, 2003, and then in Fremont, California from April 10, 2003 to March 1, 2005. The latter visa was still in effect at the time of filing in January 2005. These documents, however, show only that the beneficiary was authorized to work for [REDACTED]. Because they were issued in advance of the claimed employment, they cannot show that the beneficiary actually undertook that employment.

The director issued a request for evidence on April 21, 2005, instructing the petitioner to provide evidence of the beneficiary's employment during the **January 2003-January 2005** qualifying period. In response, the petitioner submits copies of pay stubs, showing that [REDACTED] in Fremont paid the beneficiary \$1,000 per month from May 2003 to February 2004, and \$1,200 per month from March 2004 to January 2005, for a total of \$8,000 in 2003 and \$14,000 in 2004. Form W-2 Wage and Tax Statements match these amounts. Inscriptions show that the earliest pay stub covers the period from May 1 to May 31, 2003, and the \$1,000 paid that month matches the "Year to Date" amount, which demonstrates that [REDACTED] in Fremont did not pay the beneficiary for any work performed before May 1, 2003. The petitioner did not submit any evidence to show that the beneficiary worked at [REDACTED] in Pennsylvania during the first months of 2003.

The petitioner submits copies of the beneficiary's federal and state income tax returns for 2003 and 2004. These documents show, respectively, \$8,000 and \$14,000 in wages paid to the beneficiary, consistent with the documentation from [REDACTED]. The returns also show that the beneficiary reported business income for both years, \$1,302 in 2003 and \$33 in 2004. On both returns, the petitioner's occupation is listed as "Sales Marketing." The petitioner reported gross receipts of \$8,384 in 2003 and \$971 in 2004, offset by expenses such as "Samples" and "Printing." The tax returns were prepared by the firm of [REDACTED]. There is no evidence that the beneficiary filed a Pennsylvania state tax return in 2003, and the beneficiary did not report any wage income that year other than the \$8,000 from [REDACTED] in Fremont. Thus, the tax documents contain no evidence that the beneficiary worked in Pennsylvania during 2003. Because the beneficiary's \$8,000 in wage income is linked to paychecks dated May to December 2003, there is no evidence that the petitioner was employed by anyone between January 26 and April 30, 2003.

The director denied the petition on November 5, 2005, stating that the petitioner had not established the beneficiary's claimed employment prior to May 1, 2003. The director also found that the beneficiary's "sales marketing" income demonstrated that the beneficiary engaged in secular work in 2003 and 2004.

On appeal, [REDACTED] states: "On the income tax returns prepared, [the beneficiary's] occupation was erroneously entered as sales marketing. As a hobby, [the beneficiary] generated a minimal taxable income from sales marketing activity which was reported as required by the Internal Revenue Service. To reflect more accurately on her income tax returns, the occupation should be input as **preacher**" (emphasis in

original). Concerning reference to “minimal taxable income,” the beneficiary’s gross receipts in 2003 were greater than her pre-tax salary that year.

A statement from the beneficiary offers further details. The beneficiary states that she had suffered from health problems, and that a friend told her about “a special set of clothing which had been said to improve health. In order to be purchased, this special clothing required that I become a member of the organization.” The beneficiary asserts that she was so enthusiastic about these garments that she bought samples for her “church associates,” who, in turn, purchased more of the products. The beneficiary states that the business income “was an unintentional development,” and that every time a friend joined “the organization,” the beneficiary was entitled to a “referral bonus” which she was obliged to report as business income. The beneficiary also claims that the tax preparer inadvertently listed telephone calls “with the church associates” and printing of materials for “some church members that were more distant” as business expenses. The beneficiary does not explain how she came to claim that she drove 8,960 miles for “Business” in 2003, thereby writing off \$3,226 in “Car and truck expenses.” There is no reason to assume that the beneficiary accidentally claimed personal driving as a business expense, because the tax return also indicates that she owns a second vehicle for personal use. Thus, either the beneficiary bought a second car exclusively for what her tax preparer now calls a “hobby,” or her tax return contains false statements.

The petitioner submits printouts from <http://www.nefful-usa.com>, the web site of Nefful U.S.A., Inc. The company sells garments made of Tevion, a fabric that “produces ‘NEGATIVE ELECTRIC IONS’ to promote health.” The question of whether or not negative ions actually promote health is outside the scope of the present decision. More significantly for our purposes, the printouts do not establish that the beneficiary’s hundreds of dollars in business income are the inevitable result of buying clothing from Nefful U.S.A. The petitioner has submitted nothing from Nefful U.S.A. to corroborate the beneficiary’s claim that she unintentionally became a sales consultant by recommending Tevion garments to her friends. Indeed, the petitioner has not even provided documentation to show that the beneficiary’s income is, in fact, from Nefful U.S.A.

The letters submitted on appeal raise more questions than they answer, and the petitioner has offered no documentary support for the assertions set forth in those letters. 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*, 19 I&N Dec. 582, 586 (BIA 1988).

The petitioner also submits a copy of a letter from an official of [REDACTED] in Union City, California. The official (whose signature is not fully legible) indicates that the petitioner worked for that association in Fremont “from April 10, 2003 to March 1, 2005 as a Preacher.” This letter only covers the beneficiary’s time in California, and thus it does nothing to establish that the beneficiary had previously worked in Pennsylvania. With regard to the assertion that the beneficiary worked “from April 10, 2003,” that is the date on the beneficiary’s R-1 visa, but, as noted above, the beneficiary’s first paycheck covers the period from May 1 to May 31, 2003. Because the beneficiary was not paid in 2003 for any work performed in April 2003, a letter

from two and a half years later cannot establish the extra three weeks of work. Even if it did, this is several months short of the required two-year period.

The petitioner has never submitted any evidence to show that the beneficiary worked for [REDACTED] in Pennsylvania, even though the petitioner was obviously able to obtain detailed and persuasive evidence to show that the beneficiary worked for that same organization in California. As noted earlier, the R-1 approval notice shows only that the beneficiary had prior approval to work for the organization in Pennsylvania; it cannot and does not show that she actually worked there. Even if we were to presume that the beneficiary worked in Pennsylvania for the full time authorized, there remains a two-month gap in 2003 between February 28, the last day the beneficiary was authorized to work in Pennsylvania, and May 1, which payroll records show was the first day the beneficiary worked in California.

The petitioner has failed to show that the beneficiary continuously worked as a minister throughout the January 2003-January 2005 qualifying period. This, by itself, is sufficient grounds for denial of the petition. Also, the director was also correct to question the beneficiary's reporting of business income entirely apart from her temple salary. The petitioner's response, on appeal, to these concerns lacks credibility. These credibility concerns call into question the beneficiary's *bona fide* intent to work solely as a minister as the law requires.

The petition is 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. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.