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[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: MAY 19 2006

WAC 03 122 52976

IN RE: Petitioner:  
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.

*Robert P. Wiemann*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) withdrew the director's decision and remanded the matter for a new decision. The director again denied the petition and, pursuant to the AAO's instructions, certified the matter to the AAO for review. The AAO will affirm the denial of the petition.

The petitioner seeks classification 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 *mashgiach* (kosher food supervisor) at [REDACTED] Kosherland bakery and restaurant on behalf of Kehilla Kosher Products. The director determined that the prospective employer is not a qualifying tax-exempt religious organization, and that the petitioner has not established that he had the requisite two years of continuous work experience as a *mashgiach* immediately preceding the filing date of the petition.

The AAO withdrew the director's decision and remanded the matter for further review. The director's second denial notice rests only on the finding that the petitioner has not adequately established the required two years of continuous work experience immediately preceding the filing date.

In certifying the new decision to the AAO, the director allowed the petitioner 30 days in which to submit a response to the certified denial. The AAO has received no response, and counsel has confirmed that no response was submitted. We shall, therefore, render a decision based on the record as it now stands.

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 March 7, 2003. Therefore, the petitioner must establish that he was continuously performing the duties of a *mashgiach* throughout the two years immediately prior to that date.

Letters submitted with the initial filing of the petition offer an incomplete and poorly documented picture of the petitioner’s work during the March 2001-March 2003 qualifying period. [REDACTED] rabbinic administrator of Kehilla of Los Angeles, states: “I first met [the petitioner] in January, 2002, and I can confirm that he is born and raised in the Jewish faith. He has been acting as a mashgiach during this time.” [REDACTED] asserts that Nathan’s Kosherland “requires the presence of a full time . . . mashgiach,” but he does not go so far as to state that the petitioner has worked full time at Nathan’s Kosherland since January 2002.

[REDACTED] Kashrut administrator at the Rabbinical Council of California, states that the petitioner “has been approved to serve as a Mashgiach . . . since March 2000,” but approval to serve and actual service are two different things. Therefore, certification of approval is not proof of service.

[REDACTED] of Ohel Rahel Beit Hamidrash states “I know that [the petitioner] has been working as a Mashgiach for various Rabbis and organizations since February 2000.” [REDACTED] here, does not claim to have witnessed the petitioner’s work or to have employed the petitioner. His letter contains no specific, verifiable details about the petitioner’s claimed work.

None of the above three witnesses indicate that the petitioner has been working continuously on a full-time basis, as opposed to occasionally or part-time.

On August 6, 2003, the director issued a request for evidence, requesting additional documentation and details regarding the petitioner’s work history during the qualifying period. The petitioner submitted copies of some previously submitted letters, as well as new letters. [REDACTED] states that the petitioner “worked in our establishment from February 15, 2001 to December 30, 2001,” for which he received \$50 per day. Below the rabbi’s signature, in smaller print, is a list of payments, indicating that the petitioner received \$650 for work performed between February 15 and 28, 2001, and \$1,200 for each subsequent month of 2001. The record contains no contemporaneous records (such as canceled checks) of these payments.

[REDACTED] in a new letter, repeats the assertion that he first met the petitioner in January 2002. He also states:

Prior to his work for us, he had worked for the Rabbinical Council of California . . . (It is common practice for a mashgiach to perform services for more than one kashrus organization simultaneously.)

[The petitioner] has been engaged as a mashgiach with our organization since January 2002. He has performed services at a variety of different private events, restaurants and catering operations. The nature of these events required [the petitioner], as mashgiach, to be on call from the evening, 7:00 pm until 4:00 am, several days a week. Most of the time [the petitioner] had sole responsibility as mashgiach for the on site supervision of the establishment, subject to review by myself or one of the other rabbinic authorities.

Our organization and its client establishments have been unable to enter into formal employment and compensation arrangements with [the petitioner], since he does not have a social security number or Federal Tax Id number. Accordingly, we provided him and his family . . . [with] food, clothing, and other living expenses. In addition, [the petitioner] received some cash payments directly from the organizations or individuals who had contracted with our organization for kosher services. . . .

He has been performing full time services in this capacity for Nathan's Kosherland since January 1, 2003.

The director denied the petition, and the petitioner filed an appeal which did not include any further evidence of the petitioner's qualifying experience. Reviewing the ensuing appeal, the AAO found the above letters to lack crucial information and contemporaneous support, thus preventing the finding that the petitioner carried on full-time qualifying religious work continuously throughout the qualifying period. The AAO instructed the director to give the petitioner a final opportunity to establish the necessary experience.

Subsequently, the director instructed the petitioner to submit detailed evidence of the petitioner's work history, including evidence of compensation and letters from employers "written on the letterhead of the verifying employers." Regarding [REDACTED] two letters, the director observed that in the first letter, [REDACTED] stated generally that the petitioner had worked as a *mashgiach* "for various Rabbis and organizations," but did not state that he or his congregation had been among those rabbis and organizations. The subsequent letter from [REDACTED] however, indicated that the petitioner "worked in our establishment from February 15, 2001 to December 30, 2001." The director instructed the petitioner to explain and clarify this apparent inconsistency.

In response, the petitioner has submitted a third letter from [REDACTED] repeating the prior claims that his synagogue employed the beneficiary for most of 2001 and that the petitioner "has been working full time as a Mashgiach since February 2000." [REDACTED] does not explain why, in his first letter, he neglected to mention that his synagogue had employed the petitioner for ten and a half months. His newest letter contains no specific information about the petitioner's work after December 2001. [REDACTED] of Nathan's Kosherland states that the petitioner "has been working full-time at our establishment since January 2003 to present." The letter contains no specific information about the petitioner's work prior to January 2003.

In an effort to show the petitioner's claimed work in 2002, the petitioner submits a copy of a previously submitted letter from [REDACTED]. As discussed above, [REDACTED] states that the petitioner "has been engaged as a mashgiach with our organization since January 2002." While [REDACTED] states that

the petitioner “has been performing full time services in this capacity for Nathan’s Kosherland since January 1, 2003,” there is no comparable assertion that the petitioner’s services prior to 2003 were also full time. Instead, [REDACTED] states that the petitioner “performed services at a variety of different private events, restaurants and catering operations,” which brings to mind irregular *ad hoc* work rather than a consistent full time work schedule. The statement that the petitioner was “on call from . . . 7:00 pm until 4:00 am, several days a week” is not dispositive because to be “on call” simply means to be available to work, not necessarily actually performing that work.

The director again denied the petition, observing that the letters provided in the most recent submission did not contain specific information sufficient to account for the entire qualifying period. The director noted that the petitioner’s latest submission did not explain why [REDACTED]’s first letter gave no indication at all that [REDACTED] had ever employed the petitioner, even though the director had specifically stated that such an explanation was in order. The director found that this discrepancy raised larger questions of credibility, pursuant to *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988). Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. See *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Here, the submitted evidence fails to establish the truth of the petitioner’s claims. The tax documents offer no specific evidence that the beneficiary worked for the petitioner as claimed. If Citizenship and Immigration Services (CIS) fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The petitioner appears to be a qualified *mashgiach* who has performed at least some work in that capacity during the qualifying period. The record, however, does not adequately establish that the petitioner performed qualifying duties continuously throughout the qualifying period. The director had advised the petitioner that the two letters attributed to [REDACTED] contain what appear to be inconsistencies that raise questions of credibility. The petitioner has not taken advantage of the opportunity to overcome this issue. Given the unresolved credibility issues, the question of the petitioner’s employment during 2002 cannot adequately be answered with the general assertion that the petitioner worked unspecified hours at one or more unidentified locations for ill-described and undocumented compensation.

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 director’s decision to deny the petition will be affirmed.

**ORDER:** The director’s decision of March 10, 2006 is affirmed.