

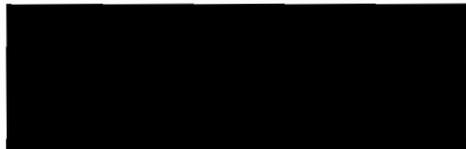
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U.S. Citizenship
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FILE: [Redacted]
WAC 03 062 52542

Office: CALIFORNIA SERVICE CENTER

Date: **MAY 16 2007**

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.

Maura Deadrick
fe Robert P. Wiemann, Chief
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 Administrative Appeals Office (AAO) rejected an earlier appeal filed by the petitioner's intending employer and instructed the director to issue a new decision to the petitioner. The petitioner has filed a new appeal. The AAO will sustain the appeal and reinstate the approval of the petition.

The alien beneficiary 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 priest for the International Society for Krishna Consciousness (ISKCON) of California. The director determined that the petitioner had not established that she had the requisite two years of continuous (*i.e.*, paid, full-time) work experience as a priest immediately preceding the filing date of the petition.

Part 1 of the Form I-140 petition identifies ISKCON of California as the petitioner. Review of the petition form, however, indicates that the alien beneficiary is the petitioner. An applicant or petitioner must sign his or her application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, Part 9 of the Form I-360, "Signature," has been signed not by any ISKCON of California official, but by the alien beneficiary herself. Thus, the alien, and not ISKCON of California, has taken responsibility for the content of the petition.

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 December 16, 2002. Therefore, the petitioner must establish that she was continuously performing the duties of a priest throughout the two years immediately prior to that date.

In a letter accompanying the petitioner's initial submission, ██████████¹ President of ISKCON of California, stated that the petitioner "had worked as a Priest in [ISKCON's] Croatia temple from January 1996 to June 1999 and at [the] Los Angeles temple from July 1999 to current." ██████████ indicated that the petitioner worked for ISKCON of California under an R-1 nonimmigrant religious worker visa, valid from 1999 to 2004. The record confirms the beneficiary's then-current R-1 status.

In a separate letter, ██████████ described the petitioner's duties and compensation as a *pujari* or altar priest, stating that the petitioner "assists with" daily prayer services from 4:30 a.m. to 7:30 a.m., followed by an hour of "Spiritual Education Class." ██████████ described various ritual responsibilities, and stated that each "*pujari* must make a commitment to dedicate serving the Lord until the end of her natural life." ██████████ added that the petitioner "also renders service (with no salary) in the temple's elementary school five (5) days a week (9:00 am to 3:30 pm). Her responsibilities include: Teaching the 5th grade class and assist with after school activities."

¹ On some letters, his surname is spelled ██████████

The director approved the petition on June 14, 2003. Subsequently, on April 1, 2004, the petitioner applied for adjustment to permanent resident status. When she filed that application, the petitioner indicated that her work as a priest for ISKCON of California was her only employment since 1999. On April 23, 2005, the director instructed the petitioner to submit tax documents from 2002, 2003 and 2004. In response, the petitioner submitted a letter from [REDACTED] who stated that the beneficiary "is provided free accommodation in the temple Ashram and free boarding and basic necessities of life. The devotees are not paid salary or monetary compensation."

The director issued a notice of intent to revoke on June 16, 2005, stating:

The regulations distinguish religious vocations from lay religious occupations. 8 CFR 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. While such persons are not employed per se in the conventional sense of salaried employment, they are fully financially supported and maintained by their religious institution and are answerable to that institution. . . . [In contrast,] lay persons are employed in the conventional sense of salaried employment. . . .

[T]he Service holds that lay persons who perform volunteer activities, especially while also engaged in a secular occupation, are not engaged in a religious occupation and that the voluntary activities do not constitute qualifying work experience for the purpose of an employment-based special immigrant visa petition.

Moreover, in this case the beneficiary is not teaching religion classes but is the elementary school teacher, five days a week. . . . [T]he Service does not recognize casual or incidental voluntary services as satisfying the requirement of having been continuously carrying on a religious occupation.

The director is correct that occasional volunteer work does not qualify as continuous experience in a religious occupation. Here, however, the director seems to have overlooked ISKCON of California's assertions regarding the terms of the beneficiary's work. If the petitioner is bound to the temple by permanent vows, and relies upon the temple for all her material needs, then such an arrangement appears to be much closer to a religious vocation than a religious occupation. Indeed, the director did at one point acknowledge the temple's support of the petitioner, but rather than draw any proper conclusions from that information, the director followed it with a *non sequitur* that does not seem to apply in this proceeding: "the petitioning temple [sic] states that the beneficiary was compensated with room and board. However, the donation of services to one's church is not considered engagement in a religious occupation and as such does not constitute experience in a religious occupation."

The director revoked the approval of the petition on August 8, 2005, stating that the petitioner had not responded to the notice of intent to revoke. The record indicates that the director received a response to the notice before rendering that decision. The director reissued the notice of revocation on June 1, 2006, under instructions from the AAO. The 2006 version of the revocation notice is identical to the 2005 version of that notice. The record indicates that the director received a response to the notice of intent prior to the first issuance of the revocation notice. The AAO will consider this submission here.

In a letter submitted in response to the notice of intent, [REDACTED] states:

ISKCON provides a substantial compensation which includes, but is not limited to, free apartment (\$625/month), food (\$200/month), clothing (\$50/month), utilities (\$60/month) and transportation (\$120/month) in return [for] the religious work [the petitioner] is performing, and we provided such compensation during the whole period December 16, 2000 through December 16, 2002. . . . This is hardly to be considered voluntary work as there is very substantial compensation for the religious work.

On appeal, counsel states: “the evidence in the record clearly shows that the petitioner was not a volunteer but was a compensated full time religious worker with the ISKCON for the requisite 2 year period immediately before the filing of the I-360.”

Much of the appeal concerns the circumstances surrounding the mailing of the notice of intent and the response thereto. Without discussing these circumstances in detail, it will suffice to state that the notice of intent was demonstrably flawed, failing as it did to take into account ISKCON of California’s material support of the petitioner throughout the qualifying period. The Board of Immigration Appeals ruled that an alien who “receives compensation in return for his efforts on behalf of the Church” is “employed” for immigration purposes, even if that compensation takes the form of material support rather than a cash wage. *See Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982). The director seemingly acknowledged the temple’s material support of the petitioner, but nevertheless continued to refer to the petitioner’s work as uncompensated volunteer work.

The petitioner was clearly not merely a part-time volunteer who contributed her services while, at the same time, supporting herself through secular employment. Regarding the beneficiary’s teaching work, if the beneficiary was bound to ISKCON by permanent vows, then the issue of specific duties is less important because the key issue is her commitment to the religious organization.

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 met that burden. Because the petitioner has overcome the sole stated basis for the revocation of the approval of the petition, the revocation will be withdrawn and the approval of the petition will be restored.

ORDER: The appeal is sustained and the approval of the petition is reinstated.