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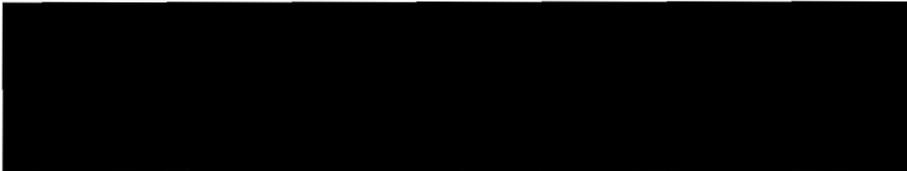
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U.S. Citizenship
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Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **AUG 20 2008**

WAC 05 153 51317

IN RE:

Petitioner:



Beneficiary:

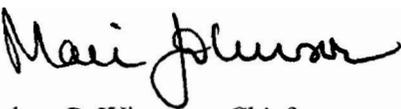
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) remanded the matter for further consideration and action. The director again denied the petition. The matter is now before the AAO on appeal. The appeal will be dismissed.

The petitioner operates a number of centers dedicated to teaching the Kabbalah, which is derived from Jewish writings. The petitioner 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 Kabbalah instructor. The petitioner indicates that the beneficiary is a *chevre*, who receives no salary but rather works for room, board, medical services and other benefits, plus a small stipend. In the second denial decision, the director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a Kabbalah instructor immediately preceding the filing date of the petition. The director also determined that the petitioner had not established that the beneficiary has received the required training for her position.

On appeal, counsel asserts that the director's decision is procedurally flawed and therefore without effect.

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 first issue concerns the beneficiary's prior experience. 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 May 10, 2005. Therefore, the petitioner must establish that the beneficiary was continuously engaged as a *chevre* throughout the two years immediately prior to that date.

In its remand order of October 19, 2006, the AAO stated:

The director determined that the beneficiary had failed to establish the required experience. The director . . . observed that the beneficiary did not hold an R-1 nonimmigrant religious worker visa until March 9, 2005, only two months prior to the filing date. The director stated that, prior to March 9, 2005, the beneficiary was a J-1 nonimmigrant. . . .

On appeal, counsel observes that the beneficiary was in the United States under a J-1 visa before she received her R-1 visa. Counsel contends that the beneficiary, as a J-1 exchange visitor, performed essentially the same work that she did as an R-1. The petitioner, however, provides no contemporaneous evidence to establish the nature of the beneficiary's work as a J-1 nonimmigrant. Without credible, contemporaneous evidence, we cannot determine whether or not the beneficiary's J-1 experience supports or undermines the petitioner's claims regarding the beneficiary's past work.

According to contemporaneous records, when the petitioner sponsored the beneficiary as a J-1 visitor, the petitioner did not indicate that the beneficiary would be a Kabbalah instructor. Rather, the petitioner identified the beneficiary as a "Research Scholar" engaged in "[a] program . . . to provide research opportunities in the various fields of research conducted by the [petitioner] for qualified foreign research scholars to promote the general interest of international, educational and cultural exchange." The petitioner has not specified the nature of the "research" that the beneficiary undertook as a J-1 visitor, nor has the petitioner shown that the beneficiary's present duties also include similar "research."

On March 13, 2007, the director issued a request for evidence (RFE), instructing the petitioner to "submit credible, current evidence" relating to the beneficiary's experience as a J-1 nonimmigrant during the 2003-2005 qualifying period. The director instructed the petitioner to submit evidence to describe the beneficiary's research during the qualifying period and to show that the beneficiary continues to engage in such research.

In response, [REDACTED], Business and Legal Affairs Administrator for the petitioning organization, stated: "the regulations governing J-1 scholars clearly permit the participant to 'teach or lecture' (22 C.F.R. § 62.4(f)) (emphasis in original). This assertion is unresponsive to the director's request for evidence about the beneficiary's research. Ms. [REDACTED] argued that "both the Teacher and Research Scholar have essentially the same duties. . . . It seems trite that research and teaching are in fact part of the same discipline and are not two separate positions."

Similarly, Secretary of the petitioning organization, stated: "Research is clearly an essential component of teaching and vice versa." This argument ignores the very regulation at 22 C.F.R. § 62.4(f) that the petitioner cited, which reads, in full:

Research scholar. An individual primarily conducting research, observing, or consulting in connection with a research project at research institutions, corporate research facilities, museums, libraries, post-secondary accredited educational institutions, or similar types of institutions. The research scholar may also teach or lecture, unless disallowed by the sponsor.

Clearly, the Department of State draws a distinction between research and teaching. A J-1 "research scholar may . . . teach or lecture," but that the individual must be "*primarily* conducting research, observing, or consulting in connection with a research project" (emphasis added). The regulation thus contradicts the petitioner's claim that "teaching" and "conducting research" are effectively interchangeable. The regulation's specific reference to "a research project" indicates that ongoing tasks (such as teaching) that are not connected with any particular "research project" cannot properly qualify an alien for J-1 status. Even then, the petitioner neglected to establish that the beneficiary has conducted *any* research in the United States; the general observation that teachers may conduct some research in furtherance of their teaching duties cannot suffice in this regard.

The AAO acknowledges that the focus of the present proceeding is a special immigrant religious worker petition, and not the beneficiary's prior J-1 status. Nevertheless, evidence regarding the extent to which the petitioner and the beneficiary have complied (or failed to comply) with the terms of that J-1 status are directly relevant when considering the *bona fides* of the petitioner's claims and assertions in the instant proceeding. If the beneficiary secured admission into the United States under the pretext of conducting a "research project" that the petitioner cannot even adequately describe, let alone document, then it becomes exceedingly difficult to grant the petitioner's other unsubstantiated assertions any credence. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). 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. *Id.* at 582, 591-92.

asserted that, because the beneficiary seeks to work in a religious vocation rather than in a religious occupation, the nature of her past duties need not closely match those of her intended future duties. Once again, a key issue here is credibility. When the beneficiary first sought admission into the United States, the petitioner described the beneficiary as a "Research Scholar" pursuing "research opportunities." Asked, later, to describe these "research opportunities," the petitioner has been either unable or unwilling to go beyond the vague assertion that teaching involves research.

The director denied the petition on October 12, 2007, stating that the petitioner had not satisfactorily resolved the issues raised in the RFE. The director also observed that the specific terms under which the beneficiary entered as a J-1 nonimmigrant would have required additional authorization for her to work as a teacher, and that the petitioner had not shown that the beneficiary had such authorization. On appeal, counsel does not

contest these findings, but instead claims that this deficiency “is only a basis for denial under the religious occupation category,” and because the beneficiary seeks to perform a religious vocation rather than a religious occupation, this ground for denial is therefore without effect (counsel’s emphasis). We reject counsel’s reasoning in this regard. The assertion that the beneficiary practices a religious vocation does not relieve the petitioner of its burden of proof, nor does it prohibit the director from seeking to verify the claims by which the beneficiary first gained entry into the United States. If the petitioner secured the beneficiary’s initial entry into the United States claiming one set of facts, and now asserts a different set of facts in order to secure permanent benefits for the beneficiary, it is not merely an academic question to ask whether these claims reflect reality. It is true that, within certain circumscribed contexts, the exact nature of the beneficiary’s duties in a religious vocation is immaterial; but this does not permit or excuse the submission of false or conflicting information about the nature of those duties.

The director, in the request for evidence, instructed the petitioner to “submit specific evidence” relating to the beneficiary’s claimed research (such research providing the fundamental and essential justification for her admission as a J-1 nonimmigrant). The petitioner has been unable or unwilling to do so. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. 8 C.F.R. § 103.2(b)(14). The petitioner first secured the beneficiary’s entry into the United States under a provision that required the beneficiary to be “primarily” engaged in a “research project.” The petitioner’s reluctance to provide any information about this “research project” necessarily casts the petitioner’s candor in a dim light.

The director, in the RFE, had instructed the petitioner to submit documentary evidence regarding the beneficiary’s past and present research, and advised the petitioner that contemporaneous documentary evidence would carry substantially more weight than newly-executed statements. The petitioner responded with newly-executed statements. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Based on the foregoing, the AAO affirms the director’s finding that the petitioner has not credibly established that the beneficiary has met the statutory and regulatory two-year experience requirement.

In denying the petition, the director raised an additional issue, stating:

In accordance with the petitioner’s constitution, successful candidates [for the position of *chevre*] must complete training and preparation under the Senior rabbi’s direction. . . .

The evidence of record does not include pertinent evidence to establish if such training took place and that the beneficiary is prepared to be a teacher responsible for [her] duties. It is imperative for the evidence to establish if the beneficiary has been accorded such training.

The director’s finding derives from 8 C.F.R. § 204.5(m)(3)(ii)(D), which requires the petitioner to demonstrate that the beneficiary is qualified for the position sought.

On appeal, counsel protests that the training issue did not surface in the AAO's remand order or in the director's subsequent RFE. Counsel claims that the director is prohibited from raising any issue that the AAO did not address in its remand order, because raising "new issues that would have been considered satisfied by the AAO is an action beyond the Director's authority." Counsel cites no statute, regulation or case law that would limit the scope of the new decision to issues raised previously in the remand order. Furthermore, while it is true that the AAO did not mention the training issue in its remand order, this is not a stipulation by the AAO that the issue was "considered satisfied." The AAO, in its remand order, stated only that "[a]dditional information is necessary" relating to previously cited grounds for denial. Counsel may have "assumed that this issue proved satisfactory to the AAO," but counsel's assumption does not tie the director's hands.

The director should, ideally, have raised concerns about evidentiary deficiencies in the RFE. This is not fatal to the director's decision, however, because the other cited grounds for denial are, by themselves, sufficient to warrant denial of the petition and dismissal of the appeal. Furthermore, while the petitioner was denied the opportunity to address this issue in response to the RFE, the most expedient remedy for this omission would have been the submission of the required evidence on appeal. Here, the petitioner's appeal includes no evidence relevant to the training issue. If such evidence is available, the petitioner has withheld it even after being informed that the absence of such evidence is grounds for denial.

Counsel, on appeal, notes the petitioner's prior submission of a letter from Senior Rabbi [REDACTED] who stated:

I supervised [the beneficiary's] training with various ordained rabbis and instructors, including myself, in core subjects of our religious movement. . . .

She has been using her training to perform teaching and research in Kabbalah from April 2000 until present.

Counsel states: "the Director quotes this letter, but does not explain why this letter is not considered as evidence or why it is not considered probative." The director and the AAO had already distinguished between contemporaneous documentary evidence and unsupported after-the-fact claims by witnesses. Rabbi [REDACTED] provided no documentary evidence of the beneficiary's training, and only a vague description of what such training entailed. The director did not find that the petitioner had failed to claim that the beneficiary was properly trained; rather, the director found, correctly, that the record lacked evidence (as opposed to claims) regarding that training. The AAO affirms the director's finding in this regard.

The appeal will be dismissed 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.

ORDER: The appeal is dismissed.