

U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536

[REDACTED]

NOV 18 2003

File: [REDACTED] Office: VERMONT SERVICE CENTER Date:

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:
[REDACTED]

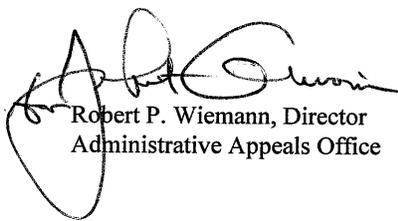
Identifying data deleted to
prevent unwarranted
invasion of personal privacy

INSTRUCTIONS:
This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

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

In this decision, the term "prior counsel" shall refer to attorneys at the firm of Hyder & Galston, who represented the petitioner through the initial filing of the appeal. The term "counsel" shall refer to the present attorney of record, who prepared the subsequent appellate brief.

The petitioner is a Sikh 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, 8 U.S.C. § 1153(b)(4), to perform services as a Raagi, a type of ceremonial musician. Some letters refer to the beneficiary as a "Raagi Jatha," but other documents in the record indicate that the term "Raagi Jatha" refers to a group of individuals. The director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary, or that it has the financial ability to pay the beneficiary's proffered wage.

On appeal, counsel indicates that the petitioner has submitted sufficient evidence to establish eligibility.

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 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) echoes the above statutory language, and states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States.” The regulation 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.”

The first issue in this proceeding is whether the petitioner has made a qualifying job offer. 8 C.F.R. § 204.5(m)(4) states that each petition for a religious worker must be accompanied by a job offer from an authorized official of the religious organization at which the alien will be employed in the United States. The official must state how the alien will be solely carrying on the religious vocation and describe the terms of payment for services or other remuneration.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a “religious occupation” and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term “traditional religious function” and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term “traditional religious function” to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

Further, while the determination of an individual’s status or duties within a religious organization is not under the Bureau’s purview, the determination as to the individual’s qualifications to receive benefits under the immigration laws of the United States rests within the Bureau. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

Charanjit Singh, president of the petitioning temple, states:

[W]e need a Raagi to perform daily services at the Temple to read, sing and explain to the congregation the hymns from the Holy Book called the Guru Granth Sahib. In the Sikh Temple, the religious services are performed in the morning and evening every day. The Raagi group (comprised of musicians) is also responsible for teaching children the Sikh literature and learning to sing the hymns with Indian instruments called Tabla (drums) and Harmonium (piano).

[The beneficiary] has professional education and training in playing Tabla and singing hymns. He has been performing as a Raagi for [the] last 15 years. . . .

[The beneficiary] has been serving [the petitioner] as Raagi Jatha since June of 2000 until present. . . . He is the resident Raagi Jatha of the Temple. The Raagi Jatha is made up of two or three persons who sing the holy hymns (Kirtan) with the help of musical instruments. . . . You need [at least two] people to do the Kirtan properly. They are together a Raagi Jatha or group. . . .

Additionally, [the beneficiary] teaches the children of [the] Sikh community to play Tabla, as well as Punjabi language classes at the Temple and the devotees' homes. He is also responsible for preparing the holy meals for the morning and evening service at the Temple. He has to prepare the meals in a holy and traditional manner. While cooking these holy meals he chants holy prayers.

Ranjit S. Dhaliwal, secretary of Gurdwara Nanaksar Thath Isher Darbar, a temple in Mississauga, Ontario, states that the beneficiary worked at that temple "from March 1999 to May 2000. He worked as a Raagi Jatha and Sevadaar over here during that time. . . . He worked here full-time to keep up with the daily running of the Temple." This claim is inconsistent with information provided on the I-360 petition form, which indicates that the beneficiary arrived in the United States on December 20, 1997. If the beneficiary has been in the U.S. since December 1997, then he could not possibly have been working at a Sikh Temple in Canada in 1999 and 2000. Because these two claims are contradictory and mutually exclusive, at least one of the two claims must necessarily be false. 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 (BIA 1988).

The director instructed the petitioner to submit further evidence to establish that "the beneficiary's primary duties . . . require specific religious training" and constitute "traditional religious functions" beyond tasks routinely undertaken by congregation members.

In response, the petitioner has submitted background materials that state "Raagi Jatha is one of the inseparable part[s] of any Sikh temple in the world." These materials also define Sevadaars, or Sevadars, as "general Sikh temple workers" who are "responsible for general upkeep and maintenance of the temple and premises." The petitioner has also submitted diplomas reflecting the beneficiary's education in classical vocal music. This documentation does not specify whether this training was religious or secular in nature, and the background documents do not indicate what training is required to become a member of a Raagi Jatha.

The director denied the petition, stating that "the petitioner has not explained the standards required to be recognized as a Raagi Jatha in its denomination or shown that the beneficiary has satisfied such standard." The director noted that 8 C.F.R. § 204.5(m)(2) specifically excludes lay preachers from the definition of "minister." This last observation is irrelevant, because the petitioner has not claimed that the beneficiary qualifies for classification as a minister.

On appeal, prior counsel states that the director "failed to apply a fair and reasonable standard when reviewing the Beneficiary's qualifications for the position in question," and that the petitioner has adequately "stated and expressed" "the requirements for the position." The petitioner has described the duties of the position, but this list of duties does not establish the minimum requirements that one must meet in order to become a Raagi. Prior counsel did not elaborate on these arguments, stating instead that a brief would be forthcoming shortly. The brief that followed was prepared by the petitioner's present counsel.

The petitioner submits a new letter from Jasbir Singh Tank, president of Gurdawara Shaheed Ganj, Urapar, India, who states:

[The beneficiary] began his training in March 1990 and was certified as a Raagi Jatha in July 1993 after three years of study. His successful review by the local council of senior leaders resulted in his certification as a Raagi Jatha. Upon completion of his training and certification, [the beneficiary] became a member of the Raagi Jatha at Gurdawara Shaheed Ganj Urapar where he served in that position for four years.

The above letter is consistent with a previous letter, with an illegible signature, indicating that the beneficiary "has worked at the Gurdawara Shaied Ganj Urapar for four years, from August 1993 to September 1997, as a Raagi." That early letter, submitted only as a photocopy, shows text in at least four different sizes. It remains that the petitioner had previously claimed that the beneficiary "has been performing as a Raagi for [the] last 15 years," i.e. since 1987. The only first-hand documentation of formal education that the petitioner has submitted consists of copies of diplomas in "vocal classical" music, dated 1993 and 1997. Another witness, Bakhshish Singh, Jathedar of Gurdwara Nanaksar, Nawanshehar, India, states:

In the Sikh tradition, there is not a formal university-style education for the position of Raagi Jatha. The individual seeking to become part of the Raagi will undergo a training regimen lasting several years at a Sikh temple. . . .

This is like an apprenticeship under the guidance of our senior leadership. . . . Upon completion of his training, a council of three senior leaders will review an individual's learning and skills to confirm the completion of his training and certify his status as a Raagi Jatha.

The above documents do not show that the beneficiary was actually employed full-time as a Raagi, as opposed to volunteering part-time during religious services, much as a member of a church choir might do. Participating in religious services does not automatically qualify one as a religious worker. None of the above materials submitted on appeal demonstrate that membership in a Raagi Jatha is traditionally a full-time paid position within the Sikh religion. Several of the beneficiary's prospective duties appear to fall outside the usual duties of a Raagi.

A second issue concerns the petitioner's ability to pay the beneficiary's salary. 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The initial filing contained nothing to address this requirement. The director requested evidence of this ability. In response, the petitioner submitted a copy of its Form 990 Return of Organization Exempt from Income Tax for 2001. The form reflects an excess (of income above expenses) of \$14,673.00, and no other current assets. The petitioner's itemized expenses did not include any salaries or wages. The petitioner also submitted documents from two banks, reflecting an aggregate balance of roughly \$75,000, but bank balances do not reflect the petitioner's expenses or debts. In a letter dated April 15, 2002, the petitioner indicates that the beneficiary "is being offered a monthly wage of \$1,200, in addition to being provided lodging and meals." The monthly wage of \$1,200 equates to \$14,400 per year.

The director denied the petition, observing that "[a] bank statement does not show a complete financial record." The director also contended that the petitioner had failed to specify the beneficiary's salary, but the petitioner did in fact provide a specific amount as shown above (although the petitioner has not specified the value of the beneficiary's room and board). On appeal, the petitioner submits further copies of bank statements, despite the director's specific finding that bank statements cannot suffice. Counsel argues that the petitioner's Form 990, mentioned above, shows "showed annual revenue for the temple of \$74,832 for the year in which this application was filed." Gross income, without taking expenses into account, is not an accurate measure of the petitioner's ability to pay. The petitioner's remaining income, after expenses, was \$14,673. After paying the beneficiary \$14,400 per year, the petitioner is left with

a net balance of \$273 to pay for the "lodging and meals" that the petitioner has identified as part of the compensation package. Thus, we cannot find that the petitioner has persuasively established its ability to offer the beneficiary the compensation that has been offered.

Review of the record reveals further issues that bear consideration. Several record documents (including the petitioner's 2001 tax return, incorporation documents from the State Corporation Commission of Virginia, and a bank statement) indicate that the petitioning entity came into existence on April 16, 2001, only two weeks before the filing of the petition. The petitioner's official notification of tax-exempt status is dated even later, August 31, 2001. The record does not establish the petitioner's legal status prior to April 16, 2001, nor does it contain any contemporaneous documentation to support the claim that the beneficiary began working for the petitioner in June 2000 as claimed.

Further review of Bureau records reveals a more serious issue. On the I-360 petition form, the petitioner left blank several material questions regarding the beneficiary's past history with immigration authorities. Records show that the beneficiary failed to appear at a removal hearing on August 9, 1999. The beneficiary may have been in Canada at the time, given his claimed employment history, but this is not certain. Because the beneficiary did not appear at the hearing, the immigration judge declared "the respondent has abandoned any and all claim(s) for relief from removal. . . . [i]t is HEREBY ORDERED . . . that the respondent be removed from the United States to INDIA" (capitalization in original). The order became final following the beneficiary's failure to file a timely motion to reopen. There is no evidence in the record that the beneficiary ever returned to India after the issuance of this final order of removal. Claims made by the petitioner and the beneficiary place the beneficiary continuously in either Canada or the US ever since 1997.

While the petitioner claims that the beneficiary was in Canada from March 1999 to May 2000, documents pertaining to the beneficiary's removal hearing indicate that the beneficiary's last known address as of the hearing date was in Richmond, Virginia. On the Form I-360, the petitioner indicates that the beneficiary continues to reside at the same street address in Richmond. Given that the beneficiary is known to have been using the Richmond address in early 1999, it is not clear that the beneficiary did in fact go to Canada, only to return to the same address over a year later. The record contains no contemporaneous documentation that would definitively place the beneficiary in Canada during the period claimed.

If the petitioner never left the United States after the issuance of the final order, then the order still stands. If the beneficiary traveled to Canada and then returned, then pursuant to section 241(a)(5) of the Act, 8 U.S.C. § 1231(a)(5), the order of removal is reinstated from its original date and is not subject to being reopened or reviewed. The alien is not eligible and may not apply for any relief under the Act, and the alien is subject to removal at any time. If the beneficiary is, by law, ineligible for any relief under the Act, then this petition is moot.

Prior to his 1999 removal hearing, the beneficiary executed an immigration form on March 3, 1998. At that time, the beneficiary was not yet seeking immigration benefits as a religious

worker. The form instructed the beneficiary to list his employment during the last five years (i.e. 1993-1998). The beneficiary wrote "self employed," "farming in India," and "construction." There was ample space for additional information but the beneficiary did not make any further employment claims. Nothing in the beneficiary's employment claim could be remotely construed to refer to religious employment as a temple Raagi, which the petitioner now claims was the beneficiary's primary occupation from 1993 onward. If the beneficiary really was performing as a Raagi from 1993 to 1997 as the petitioner now claims, then he clearly did not consider this to be "employment" in 1998 (unless he deliberately withheld this information.) Furthermore, whereas the petitioner has submitted a letter claiming that the beneficiary "has worked at the Gurdawara Shaied Ganj Urapar [in Nawanshehar in the Punjab] for four years, from August 1993 to September 1997, as a Raagi," the beneficiary had earlier indicated that, from May 1996 to September 1997, he spent "more than a year" in Delhi before returning to Nawanshehar.

The above information shows that, while the beneficiary has previously dealt with immigration authorities, he never claimed to have worked in a religious capacity until 2001 when he sought benefits as a religious worker. This serious discrepancy between the present claim and the beneficiary's own prior testimony, further adds to a pervasive pattern of discrepancies, inconsistencies, and contradictions regarding the beneficiary's whereabouts and activities. This pattern fatally compromises the credibility of the claims offered in support of this petition. The petition could not be approved even if the beneficiary were legally eligible for immigration benefits, which he does not appear to be.

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.