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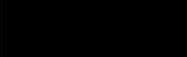
U.S. Department of Homeland Security  
Citizenship and Immigration Services

**CI**

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, DC 20536



File: 

Office: CALIFORNIA SERVICE CENTER

Date: **NOV 22 2003**

IN RE: Petitioner:  
Beneficiary:



Petition: 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: SELF-REPRESENTED

**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.

*Cindy N. Boney for*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a religious organization. It seeks classification of 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 "Priest." The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for the two full years immediately preceding the filing of the petition.

On appeal, the petitioner asserts that the beneficiary has worked an average of 45 hours per week, and therefore, the position has not been part-time, as was stated by the director. The petitioner also states that the beneficiary has been supported by a member of the congregation and has been volunteering his services as a priest, "because to be paid would make him ineligible for this visa as a religious worker..." The petitioner asserts that the regulations do not state the beneficiary must be on salary, and indicates they have had others approved under these same circumstances.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

The sole issue raised by the director to be addressed in this proceeding, is whether the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing date of the petition.

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).

8 C.F.R. § 204.5(m)(1) states, in pertinent part:

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 alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or 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. All three types of 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 petition was filed on April 1, 2002. Therefore, the petitioner must establish that the beneficiary was engaged continuously as a

religious worker from April 1, 2000 until April 1, 2002. The petitioner indicated that the beneficiary last entered the United States on January 25, 2002, as an F-1 student. The beneficiary's student Form I-20 was not submitted. The F-1 visa in the beneficiary's passport indicates that it was issued on January 4, 2000, expires on January 2, 2005, and that the beneficiary is authorized to study at California State University, Fresno, California. On Part 4 of the I-360 petition, the petitioner indicated the beneficiary has not worked without permission in the United States.

The requisite two-year period during which the beneficiary must have been continuously engaged in religious work runs from April 1, 2000 until April 1, 2002, during the same timeframe in which the beneficiary was in the United States as an F-1 student. The beneficiary's passport reflects entries to the United States at San Francisco and at Los Angeles, California on January 10, 2000, April 6, 2000, and June 19, 2001. The passport pages demonstrating where the beneficiary traveled and for how long, were not submitted. The record reflects that the beneficiary was out of the country for indeterminate lengths of time during the requisite two-year period.

The director's decision states, in part, "The beneficiary has been assisting the head priest since January 2000 to the present on a part-time voluntary basis." In the initial letter dated March 4, 2002, the petitioner stated that the beneficiary "has been assisting the head priest since January 2000 *on a part-time voluntary basis* [emphasis added] until present." On appeal, the petitioner asserts it is not true that the beneficiary worked part-time, and refers to a weekly schedule submitted in response to the request for evidence.

A plain reading of this weekly schedule indicates that from Monday through Friday, the beneficiary spends a total of four hours a day leading prayers, reciting scripture, and discussing and explaining scripture; and, on Saturday and Sundays spends 12.5 hours a day assisting other priests or working as the head priest and leading prayers and playing music during services. This schedule amounts to an average of 45 hours per week. The petitioner, however, provided no explanation to account for this schedule, which is in conflict with its initial statement that the beneficiary works for the petitioner on a part-time basis.

The director also stated that the beneficiary has worked on a voluntary basis. On appeal, the petitioner affirmed that the beneficiary has worked on a voluntary basis. The petitioner states:

Buddhist monks and Catholic priests are not paid even the minimum wage and live on a subsistence; for a Catholic priest it only amounts to \$650.00 a month for over 200 hours of work. These are the same circumstances and Manjit Singh is living on subsistence until you approve his application. To deny this application on this basis is ridiculous since if he was paid a salary during this two-year period of work he would be denied for working without our [sic] approval so the only option left is to work on a volunteer/subsistence level until the employment is approved.

The record reflects that the beneficiary and his family have been supported by a member of the congregation who has provided food, housing and additional items. The petitioner stated that members of the congregation provided donations if there was a need that could not be met by the sponsoring member. There is no evidence in the record that the petitioning religious organization has remunerated the beneficiary.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law, a minister of religion was required to demonstrate that he or she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he or she would be required to earn a living by obtaining other

employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Com. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Com 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals (BIA) determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he or she is engaged in other secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who, in accordance with their vocation, live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and salaried. To hold otherwise would be contrary to the intent of Congress.

In light of the discussion above, the petitioner has not established that the beneficiary worked continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing date of the petition. Therefore, the petition must be denied.

Beyond the decision of the director, the petitioner has not established its ability to pay the beneficiary the proffered wage of \$1,200 per month plus room and board, in accordance with 8 C.F.R. § 204.5(g)(2). The record includes a statement from Bank of America dated September 20, 2002, indicating that the **beneficiary** has held an account since January 2000, which holds an average balance of \$2,776.89, and a current balance of \$6,189.52. The record, however, contains no evidence of the petitioner's ability to pay the proffered wage. There is no evidence that the petitioner has paid the beneficiary, and the petitioner has not submitted documentation such as its annual reports, federal tax returns, or audited financial statements that would illustrate the assets and liabilities of the petitioner and permit a determination on its ability to pay the proffered wage.

It is noted that the petitioner has not shown that the facts as presented in this case are analogous to the situation of Buddhist monks or Catholic priests, as is claimed on appeal. It would appear the petitioner is asserting that the position of a Sikh priest is a religious vocation in the same manner as is, for example, the position of a Catholic priest. In this case, however, the record indicates that it is the individual members of the religious organization, as opposed to the religious organization itself, which have provided support and sustenance to the beneficiary and his family. The petitioner has not established with objective documentation that there is a requirement for the taking of vows for a Sikh priest. The petitioner, furthermore, has proffered a wage to the beneficiary, indicating that the beneficiary clearly would not live in an unsalaried environment, the primary examples of which, in the regulations, are nuns, monks, and religious brothers and sisters.

Another issue not raised by the director that will be discussed in this proceeding is whether the petitioner established that the beneficiary is qualified to perform a religious vocation or occupation. The petitioner submitted an undated letter from the President of the [REDACTED]

[REDACTED] This letter indicates that the beneficiary received his training as a Sikh priest under the guidance of [REDACTED]

[REDACTED] and Head [REDACTED] from "June 1993 until approximately November 1995." The letter indicates the beneficiary was trained "to carry out all relevant ceremonies and duties of a Sikh priest," and that he is "qualified to perform the duties of a granthi (Sikh priest) in any Sikh temple." The petitioner stated in a letter dated October 8, 2002, "Ordination is not a requirement for a Sikh priest and the training is all that is required." The record also contains a letter dated February 22, 2002, from the president of the Gudwara Sahib Dharamsala, indicating that the beneficiary served there as a Priest from January 3, 1996 until December 23, 1999. A second, undated letter from the president of the Gudwara Sahib Dharamsala further detailed the types of duties performed by the beneficiary during those years.

This documentation, however, is unaccompanied by transcripts, or other objective documentation to establish the prescribed studies, qualifications of the trainers, standards which must be met to be recognized as a priest in this denomination, and that the beneficiary has satisfied those standards. The petitioner has not specified the training that is required, and has not provided evidence of the process for being recognized as a Sikh priest. Simply going on record without supporting documentary evidence is

not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). As the appeal will be dismissed for the reason discussed, these issues need not be examined further.

Discrepancies encountered in the evidence presented call into question the petitioner's ability to document the requirements under the statute and regulations. The discrepancies in the petitioner's submissions relating to the beneficiary's work schedule have not been explained satisfactorily. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988).

In reviewing an immigrant visa petition, CIS must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.