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U.S. Department of Homeland Security

Citizenship and Immigration Services

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



File: [redacted] Office: CALIFORNIA SERVICE CENTER

Date: **SEP 29 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:



PUBLIC COPY

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 M. Boney for
Robert P. Wiemann, Director
Administrative Appeals Office

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

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), in order to be employed as a temple coordinator/trustee at Wat Phrabuddhajinaraj Buddhist Temple of Chino Hills in Chino Hills, California, at a monthly salary of \$1,000.

The director determined that the petitioner failed to establish that the position of temple coordinator/trustee constitutes a qualifying religious occupation; she has been continuously engaged in a qualifying religious occupation for at least the two years prior to the filing date of the petition; and the employing organization has the ability to pay the proffered wage.

On appeal, counsel for the petitioner submits a brief asserting that the petitioner meets the qualifications of a religious worker as required by the applicable statutes.

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, 2003, 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, 2003, 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 petitioner is a native and citizen of Thailand. Documentation contained in the record indicates that she was last admitted to the United States as a nonimmigrant visitor on June 17, 1998. The petitioner signed and filed the Form I-360 visa petition on her own behalf.

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

The first issue raised by the director to be addressed in this proceeding is whether the petitioner has established that the position of temple coordinator/trustee constitutes a qualifying religious occupation for the purpose of special immigrant classification.

The regulation at 8 C.F.R. § 204.5(m)(2) states, in pertinent part, that:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position offered 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 non-qualifying 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.

CIS 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.

The record contains an undated letter from the president of Wat Phrabuddhajinaraj. The letter lists the duties of the position as follows:

- Organize temple activities
- Schedule appointments for monks
- Record and distribute video tapes and audio tapes
- Supervise cooking functions
- Supervise cleaning
- Pay bills
- Coordinate special and religious functions
- Organize fund[-]raiser

With regard to the minimum education, training, and experience required for the position, the president states:

The job requires [a] person of Buddhist faith and knowledge. Person with Buddhist faith and knowledge will be able to understand terminology used for communicating with monks and Buddhist followers. The person will understand gravity of functions, suggest ways to improve functions, follow ethics which would respect monks, supervise food in Buddhist traditions[.] Belief in faith is most important to be able to do this job. The person must have knowledge of Buddhist teaching, know philosophy of religion, know proper etiquette as not to offend members of Temple or followers and have respect for traditions and Religion. Imagine a catholic church allowing a non catholic to coordinate activities of the church.

Although many of the functions are mechanical and can be done by an intelligent person, however, without faith and belief in Buddhist Religion, they would not be able to give respect[.]

On appeal, counsel states that the temple coordinator/trustee position involves substantially more than that of a mere janitor or maintenance worker. Counsel reiterates the president's assertions that the petitioner's duties, aside from the physical

maintenance of the building, require a knowledge of Buddhist teaching, philosophy, etiquette, and terminology. No additional evidence is submitted. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

After a review of the record, it is concluded that the petitioner has not established that the position of temple coordinator/trustee constitutes a qualifying religious occupation. First, the petitioner has not shown that the position requires specific prescribed religious training or theological education. Second, the petitioner has not shown 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. Therefore, the decision of the director is affirmed and the petition is denied.

The next issue to be addressed in this proceeding is whether the petitioner had been continuously carrying on a religious occupation for the two years preceding the filing of the petition.

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

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 August 22, 2001. Therefore, the petitioner must establish that she was continuously carrying on the religious work continuously since at least August 22, 1999.

The record contains an undated letter from the chief monk of Sunnatar Temple California Meditation Monastery in Escondido, California, indicating that petitioner performed services as a temple coordinator from August 22, 1999 to August 22, 2001. The letter indicates that the petitioner was remunerated in the form of room and board, if needed, that no cash was paid to the petitioner, and that she supported herself financially.

The legislative history of the religious worker provision of the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (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. 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 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/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).

The term "continuously" is also discussed in a 1980 decision where the Board of Immigration Appeals 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 studies. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

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/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 be otherwise would be outside the intent of Congress.

Here, the petitioner has failed to establish that she was continuously employed in a religious occupation, as required under 8 C.F.R. § 204.5(m)(1). The petition must also be denied for this reason.

And, third, the regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part, that:

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 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 annual reports, federal tax returns, or audited financial statements.

The record reflects that the petitioner failed to respond to the director's request for evidence of Wat Phrabuddhajinaraj's ability to pay the proffered wage of \$1,000 monthly. It is noted that the salary was initially quoted as \$1,000 per week. This was changed by counsel on appeal. On appeal, no additional information and documentation has been submitted to demonstrate the employer's ability to pay the proffered wage. Therefore, the petitioner has also failed to satisfy the requirements of 8 C.F.R. § 204.5(g)(2).

Beyond the decision of the director, the petitioner has failed to establish that she qualifies as a religious worker. Since the appeal will be dismissed for the reasons stated above, this issue need not be examined further.

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.