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U.S. Department of Homeland Security

Citizenship and Immigration Services

**identifying data deleted to prevent clearly unwarranted invasion of personal privacy**

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

[REDACTED]

File: [REDACTED]

Office: VERMONT SERVICE CENTER

Date: SEP 30 2003

IN RE: Petitioner:  
Beneficiary:

[REDACTED]

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:

[REDACTED]

**PUBLIC COPY**

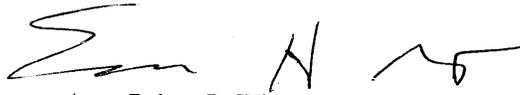
INSTRUCTIONS:

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 the Bureau of Citizenship and Immigration Services (Bureau) 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 immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a non-profit organization founded in 1987 for the purpose of providing religious services for followers of Pushti Marg, a Hindu sect. The petitioner 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), in order to employ him as a religious musician (kirtankar).

The director denied the petition, finding that the petitioner failed to establish that the offered position qualifies as a religious occupation for the purpose of special immigrant classification.

On appeal, counsel for the petitioner submits a brief.

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 beneficiary is a 25-year old citizen of India. The beneficiary entered the United States as a R-1 nonimmigrant religious worker on December 28, 1997.

The sole issue to be addressed in this proceeding is whether the petitioner established that the proposed position constitutes a qualifying religious occupation for the purpose of special immigrant classification.

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 that it is offering qualifies as a religious occupation as defined in the regulations. 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.

Initially, the petitioner described the beneficiary's job duties in the context of its religious services. The petitioner's managing trustee wrote CIS as follows:

The integral part of our worship is the performance of "seva," a form of service demonstrated in special prayers and other acts prescribed in the adoration of the lord. These "seva" and "darshan" are combined by "kirtan" (religious devotional songs) and are performed daily for about six times.

\* \* \*

[The beneficiary] possesses excellent knowledge of "Haveli Sangeet" (a branch of Indian classical music peculiar to the Pushti Margiya Vaishav Samaaj) and sings kirtans and bhajans (religious hymns). He is also very skilled with playing musical instruments, such as the "Pakhavaj" (two-sided hand played drum) and "tabla" (set of two drums played by both hands individually) in accordance with Indian classical music. At our organization, religious music is integral to the ceremonies and functions being performed at the temple.

In a request for additional evidence, the director asked the petitioner to submit evidence that the beneficiary's primary duties require specific religious training beyond that of a dedicated and caring member of the congregation to establish that they are traditional religious functions above those performed routinely by members.

The petitioner's co-founder and principal trustee responded with a seven-page letter, stating, in part, that:

An integral part of our worship is the performance of "seva", a form of service demonstrated in special prayers with music known as KIRTAN and other acts prescribed in the adoration of the Lord. The whole tenor of worship is directed towards appeasing Lord Krishna, who is bathed, clothed and fed according to a strict and detailed routine performed by a priest or *mukhiaji*. . . . His diet as well as the music - Kirtan played before him similarly reflect the time of the day, seasons, year and the festival calendar. Worship is not limited to one or two days per week in our temples, but is a daily pattern of honoring and serving Lord Krishna, who has graciously condescended to be present in the temple setting for the sake of those who love and honor Him. There are six daily sacred sightings of the Lord or darshanas at which time Pushti Margiya followers gather for the "sacred sight" of the Lord. Music is an integral part of the sightings or darshanas, and is provided by qualified musicians who are experts in their knowledge and command over a special kind of music that has evolved with our sect, the Pushti Marg. This music is called *Haveli Sangeet*, and has become a major segment of Indian classical music that is at once religious and devotional.

\* \* \*

Our music, the *haveli sangeet* requires stern and strict training.

Our religious and musical liturgy was systematized by the 2<sup>nd</sup> in lineage of Guru Shree Vallabhacharya's son, Goswami Vitthalnathji. . . *Havelii sangeet* thus has a rich historical tradition of temple-based music.

The *kirtankar* thus has to be steeped in this historical musical heritage.

The director determined that the record is insufficient to establish that the position of "musician" (*kirtankar*) qualifies as a religious occupation. The director found that the proffered job could be performed by a member of the petitioner's faith who has

musical training alone and that no religious training was required.

On appeal, counsel for the petitioner asserts that the petitioner documented in great detail how the musical services that the beneficiary performed were an integral part of the daily prayers to Lord Krishna. Counsel asserts that the beneficiary's duties relate to a traditional religious function.

In review, the petitioner established that the position of religious musician is a qualifying religious occupation in this instance. The petitioner established that the beneficiary's job duties are intertwined in the practice of the religion and that music lays an integral role in the petitioner's worship. The petitioner established that religious music training is required for the position and that the beneficiary is qualified for it.

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 sustained that burden.

**ORDER:** The appeal is sustained.