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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, DC 20536



File:

Office: VERMONT SERVICE CENTER

Date: SEP 30 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. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont 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 "Head Priest and Sikh Religious Preacher." The director determined that the petitioner had not established that the beneficiary is qualified to engage in a religious vocation or occupation, and that the position offered is not a qualifying religious vocation or occupation.

On appeal, counsel asserts that the beneficiary meets the requirements of the statute and regulation, and that sufficient evidence was presented. Counsel timely submitted a brief and additional evidence, and maintains that the beneficiary is authorized to perform duties usually performed by members of the clergy, and is employed in a religious occupation.

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

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).

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 26, 2001. Therefore, the petitioner must establish that the beneficiary was engaged

continuously as a religious worker from April 26, 1999 until April 26, 2001. The petitioner indicated that the beneficiary entered the United States on May 25, 1999, as a B-2 visitor, with authorization to remain in the United States until November 24, 1999. His current status was left blank. On Part 4 of the Form I-360, Petition for Amerasian, Widow or Special Immigrant, it was marked that the beneficiary has not worked in the United States without permission. The record contains a letter from the Secretary of the Sri Guru Singh Sabha, Inc., of Glen Rock, New Jersey, requesting an extension of stay for the beneficiary, along with the beneficiary's letter to the Vermont Service Center stating he is "destined to leave the U.S. on August 8, 2000," and requesting an extension of stay until that time.

The first issue to be addressed is whether the beneficiary is qualified to engage in a religious vocation or occupation. The director's decision indicates that the petitioner did not explain the standards required to be recognized as a head priest, and has not shown that the beneficiary has met these standards; that the petitioner did not submit a letter from an authorized official of the denomination certifying the recognition of the beneficiary's credentials as a head priest; and that the petitioner did not describe the beneficiary's theological education qualifying him for ordination; and did not explain the authority of the church to ordain one of its own members.

Regarding the beneficiary's qualifications to perform the duties of a Head Priest and Sikh Religious Teacher, the record contains several letters attesting to his studies and service in Sikh temples, and a "Certificate Sangeet & Tabla", from the Gurmat Sangeet Vidyala, dated December 15, 1985, for successful completion of studies from 1983 to 1985. It is noted that the beneficiary was between 13-15 years of age when the studies leading to the Certificate were undertaken.

The petitioner submitted a letter dated "5-2-1990," from Giani Mukhtar Singh, of the Gurudwara Sri Guru Singh Sabha, in Bombay. This letter certifies that the beneficiary "has gone under training for the preaching of Sikhism and Sikh religious studies, which includes, Sikh History, Philosophy, Principles and Norms for four years from Feb[ruary] 1986 to Jan[uary] 1990." Another letter dated December 25, 1993, from [REDACTED] Hazoori Ragi, Golden Temple, Amritsar, Punjab, India, certifies that the beneficiary "has been trained for religious musician [sic] for two years from March 1990 to Jan[uary] 1992 under my supervision." The certificate and attestations are unaccompanied by transcripts,

documentation regarding the qualifications and recognition of the trainers, and any elaboration of the coursework, hours of study and other objective criteria.

On appeal, counsel states:

There is no such thing as an authorized official of the Sikh religion/denomination who would recognize a persons credentials as an head priest and sikh religious preacher [sic]. To be qualified to perform the services of a Priest in Sikh Temple would require an individual to have undergone training in a Gurudwara or under a Head Priest or a Missionary College in the teachings of the [REDACTED] and the musical renderings of these teachings. Since, Sikh Missionary Colleges are very few and located in only a few cities, it is generally an accepted norm for an individual to be trained in a Gurudwara under the guidance of a Priest. The foundation of Sikhism, which is the world's youngest religion, was laid down by Guru [REDACTED] infused his own consciousness into a disciple, who then became [REDACTED] subsequently passing the light onto the next Guru and so on. The priests in the Sikh religion also follow the same tradition of passing knowledge on to the next and so on. Training to perform the services of a Priest can either be obtained from a Sikh Missionary College, which are very few, or under the guidance of other Priests, and is the accepted standard norm by all the Gurudwaras of the Sikh denomination. To qualify for the position of a Head Priest, besides religious training, two or three years experience in the same field is an accepted norm.

Counsel includes pages from a website "The Sikh Network, Community" (full web address not provided), which gives a general overview of Sikhism, but does not discuss the requirements for becoming a Sikh Priest or the Sikh religion's recognition of the qualifications necessary to become a Sikh Priest. Counsel has not provided any other objective documentation that discusses the requirements and manner by which an individual may be trained and recognized as a priest in the Sikh religion. 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).

It is also noted that the statements of counsel on appeal conflict with the petitioner's letter of January 15, 2001, which asserts that the beneficiary is highly qualified for the position and "has a total training period of 4 years in religious studies from the top most schools in India teaching Sikh religious Studies (*emphasis added*)." This statement indicates that the beneficiary attended a recognized institution, and would have documentation of his studies there.

In reference to the beneficiary's qualifications as a Head Priest, counsel also notes, on appeal, that the beneficiary "was employed by the historical Golden Temple in Amritsar which is the supreme spiritual place of worship for the Sikhs." The documentation submitted regarding the beneficiary's employment in Sikh temples, however, offers conflicting information.

A letter dated June 20, 2000, from the Manager, [REDACTED] at Amritsar, certifies that the beneficiary "is working for [REDACTED] COMMITTEE [sic] at GOLDEN TEMPLE ... at AMRITSAR ... as a Sikh religious Priest since March 1, 1991." This would appear to conflict with the above referenced letter of [REDACTED] which states that the beneficiary was undergoing training as a religious musician at the Golden Temple from "March 1990 to Jan[uary] 1992, and then "joined our Jatha and served in Golden Temple Amritsar from Feb[ruary] 1992 to Dec[ember] 1993." Furthermore, if the beneficiary served as a priest prior to his religious musician training, then the certification in religious music would not appear to be a requirement for serving as a Sikh priest, as has been declared by both the petitioner and counsel.

The letter dated June 20, 2000, from the Manager, [REDACTED], at Amritsar also states, [REDACTED] use to work [sic] as Missionaries Priest in Golden Temple, since Nine Years ... After he came to America we gives [sic] his pay to his family ... [He] was a regular and full time employee of our committee." This letter, however, is inconsistent with a letter dated "5-3-2001" from the President, [REDACTED]

[REDACTED] which certifies that the beneficiary "worked at this Gudwara as a Sikh religious priest and Sikh religion music performer from January 10, 1994 to present ... The salary of [REDACTED] is Rs. 6000/- per month and is still being paid to his parents." The petitioner

has not satisfactorily explained how the beneficiary was a priest at a gudwara in Lucknow and a priest at a gudwara in Amritsar during overlapping timeframes. If the grammar of the June 20, 2000 letter is to be construed as meaning the beneficiary worked nine years for the Golden Temple up until March 1, 1991, it is noted that this would have then occurred when the beneficiary was 12 years of age and prior to any of his stated religious training.

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 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 light of the discussion above, we concur with the director's determination that the petitioner did not establish that the beneficiary is qualified to engage in a religious vocation or occupation, and the petition must be denied.

The director also determined that, "The record does not establish that the beneficiary has been and will be employed in a religious occupation." The director had requested evidence that the position requires specific religious training above beyond that of a caring member of the congregation, and that the duties relate to traditional religious functions above those performed routinely by other members.

The petitioner's letter of January 15, 2001, states, "Other members of our congregation are not qualified to perform the functions of Head Priest as they are not educated or experienced in the Sikh religious teachings." The letter states "only an individual who has undergone religious training" can perform the duties as a Head Priest. While the title and duties have every appearance of relating to a traditional religious function, other than statements by the petitioner and counsel, no objective evidence was submitted to establish that the position is a traditional religious occupation or vocation requiring the taking of vows or specialized

training of the sort to prepare one for a career in religious service.

The evidence of record, therefore, also does not establish that the position is a traditional religious occupation or vocation, and the petition must be denied for this reason.

Beyond the decision of the director, the petitioner has not established that the beneficiary was continuously performing the duties of a qualifying religious vocation or occupation throughout the two-year period immediately preceding the filing date of the petition. Because the beneficiary was outside the United States for approximately one month from April 26, 1999 until May 25, 1999, whether he was continuously engaged in a religious vocation in India also must be considered. As discussed above, the record is inconsistent concerning the beneficiary's places and timeframes of work in India.

In addition, the petitioner submitted a "Two Years Work Experience Certificate", dated April 12, 2002. This letter states the beneficiary "is employed full time to perform duties as a Sikh religious Head Priest and Sikh religious preacher from May 2001 to present. Before May 2001, he was working for

~~_____ since January 1994 to May 2001." This statement, however, does not take into account: the submitted documents stating that the beneficiary also worked for the Golden Temple; the beneficiary's arrival in the United States in May 1999; and, the period of time the beneficiary was engaged at the Sri Guru Singh Sabha, Inc., in Glen Rock, New Jersey. The New Jersey gurdwara, in a letter dated November 1, 1999, indicated the beneficiary had performed at their temple for an undisclosed period of time, and petitioned for his extended stay in the United States, assuming "complete responsibility, financial, lodging, and otherwise, during his stay with us." Based on the record, the petitioner has not established that 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.~~

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.