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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date:

NOV 03 2004

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]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

The petitioner is a Hindu 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 (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 two full years immediately preceding the filing of the petition. The director further determined that the petitioner had not established that the beneficiary was qualified for the position within the religious organization, that it had extended a qualifying job offer to the beneficiary or that it had the ability to pay the proffered wage.

On appeal, counsel submitted a brief and additional documentation.

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 Revenue 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 a Form 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 regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on January 23, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a priest throughout the two-year period immediately preceding that date.

In its letter accompanying the petition, the petitioner stated that the beneficiary “conducted his priestly activities at [REDACTED].”

The petitioner stated that the beneficiary performed “all vedic ceremonies and sacraments,” and performed the administrative duties of the temples and counseled families. The petitioner submitted a copy of the beneficiary’s curriculum vitae, and a copy of a March 12, 2001 Master of Nirukta certificate. The petitioner also submitted a copy of a certificate of ordination as a priest issued to the beneficiary on November 12, 2002. Although the document is signed, the signature of the individual signing it and the identity of the issuer of the certificate were not translated from the Hindi language.¹ Additionally, the “certificates of character” submitted in support of the petition, which purport to identify the beneficiary as a respected Hindu priest, also failed to adequately identify the authors or the institutions that they represented.

In a request for evidence (RFE) dated April 10, 2003, the director instructed the petitioner to “[s]ubmit a detailed description of the beneficiary’s prior work experience including duties, hours and compensations . . . accompanied by appropriate evidence (such as copy of pay stubs of checks, W-2’s or other evidence as appropriate).”

In response, counsel stated that the beneficiary has been employed as a priest in India at [REDACTED] [REDACTED] the March 2000, and was supported by Dakshina (donations) as is the custom in India. The petitioner submitted a copy of a June 26, 2003 certificate of work, certifying that the beneficiary is “currently working as a resident [REDACTED] since March 6, 2000. He conducts all [REDACTED] worship services, rituals and Sacraments.” An annotation at the bottom of that document states “worked at [REDACTED] [REDACTED] and appears to have been written by a representative of the petitioner. As with other documentation submitted by the petitioner, the identity of the author or the organization that he or she represents

¹ 8 C.F.R. § 103.2(b)(3) requires that documents submitted in a foreign language “shall be accompanied by a full English translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.”

were not accompanied by an English translation of the Hindi language. Nothing in the documents addresses the beneficiary's compensation. Counsel's assertions as to the compensation received by the beneficiary are not evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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/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/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).

The term "continuously" also is 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 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/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 generally salaried. To hold otherwise would be contrary to the intent of Congress.

Despite counsel's assertions on appeal that the petitioner "showed that the Beneficiary receives housing, clothing, food and access to televisions, computers, etc. at the Gurukul" and was compensated by [REDACTED] the petitioner submitted no competent evidence to corroborate counsel's statements. The petitioner submitted no evidence during the initial stages of the petition process regarding the beneficiary's compensation or that such compensation was in accordance with traditional Hindi standards for priests.

On appeal, the petitioner submits an English translation for the letterheads of the various documents previously submitted, and a legible copy of the "certificate of work," which appears to have been signed by the principal of [REDACTED]. The petitioner also submits other documents providing details of the beneficiary's work in India and the compensation he received.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

The director determined that the petitioner had not established that the beneficiary was qualified for the proffered position. The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(B) That, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested.

The petitioner submitted copies of the beneficiary's certificate of ordination as a priest and Master of Nirukta certificate. The "certificate of work" indicates that the beneficiary has been working as a resident Vedic-Hindu priest since March 2000. Although the director, in her RFE, instructed the petitioner to provide details of the beneficiary's qualifying credentials, the petitioner submitted no competent evidence to establish the beneficiary's qualifications.

As discussed above, the petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. at 764; *Matter of Obaigbena*, 19 I&N Dec. at 533. The appeal will be adjudicated based on the record of proceeding before the director.

The petitioner provided insufficient evidence to establish that the beneficiary was qualified as a priest with the petitioner.

In its letter accompanying the petition, [REDACTED] a trustee of the petitioner, stated that the petitioner "understands that the position for the beneficiary is a temporary one." In his letter responding to the RFE, counsel states that the beneficiary will be paid \$500.00 per month plus housing and will work for approximately 20 hours per week. The director determined that the evidence did not establish that the petitioner had extended a qualifying job offer to the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

On appeal, the petitioner submits a letter in which it includes a job description. The job description indicates that the salary for the position is \$1,100 per month for a 40-hour workweek.

On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority, or the associated job responsibilities. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The evidence reflects that the proffered job at the time the petition was filed was temporary in nature and part-time, neither of which is qualifying employment for purposes of this employment based visa petition.

A petitioner must also demonstrate its ability to pay the proffered wage.

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 petitioner submitted no evidence of this requirement with its petition. In response to the RFE, the petitioner submitted copies of its bank statements for April 2003.

On appeal, the petitioner submits copies of its bank statements for January through August 2003, a "Receipts and Payments Report" December 2000 to December 2001, and a list of donors. Additionally, the petitioner submitted a statement from a Certified Public Accountant who states that based on the documents he

reviewed, the petitioner's financial worth consisted of \$72,634 in bank deposits and approximately \$1 million dollars in real estate with no liabilities.

The above-cited regulation states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence.

On appeal [REDACTED] states that he has sufficient income and assets to financially support the beneficiary, and states his willingness to support the beneficiary. The personal funds of an official of the organization, however, even if determined sufficient to pay the beneficiary the proffered wage, cannot be legally obligated to satisfy the liabilities incurred by the petitioning organization.

The evidence submitted is insufficient to establish that the petitioner's ability to pay the proffered wage as of the date the petition was filed.

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.