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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: JUL 27 2007

EAC 05 220 50085

IN RE:

Petitioner:



Beneficiary:

PETITION: Immigrant 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 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.

Maura Deedrick
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is identified as 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 pundit, or priest. The director determined that the petitioner had not established that it is a qualifying tax-exempt religious organization, or that the beneficiary had the requisite two years of continuous work experience as a pundit immediately preceding the filing date of the petition.

On appeal, the petitioner submits a letter from a temple official and various exhibits.

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).

First, we shall discuss the petitioner's tax status. 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization seeking to employ the beneficiary qualifies as a non-profit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The petitioner's initial submission did not include any documentary evidence of its federal tax status. Accordingly, on December 1, 2005, the director issued a request for evidence (RFE), instructing the petitioner to submit documentation to comply with the regulation cited above. The petitioner submitted copies of Internal Revenue Service Form 990 Returns of Organization Exempt From Income Tax, and on these returns the petitioner identified itself as a 501(c)(3) tax-exempt organization. A Form 990 return, however, does not meet the evidentiary requirements of 8 C.F.R. § 204.5(m)(3)(i). Furthermore, not every 501(c)(3) tax-exempt organization is tax-exempt *for religious purposes* as the regulations require. On its own Form 990 returns, the petitioner indicated that its "primary exempt purpose" was to provide "[e]ducational and social assistance to community." Thus, on documents submitted directly to the Internal Revenue Service, the petitioner did not identify itself as a religious organization.

The petitioner submitted a copy of its articles of incorporation, in which the petitioner identifies itself as "a non profit religious corporation." While the articles of incorporation, as the petitioner's organizing document, would be among the documents required under 8 C.F.R. § 204.5(m)(3)(i)(B), other documents would be needed as well. The petitioner's articles of incorporation, alone, do not satisfy the director's request. The necessary documentation is described in a memorandum from William R. Yates, Associate Director of Operations, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003):

- (1) A properly completed IRS Form 1023;
- (2) A properly completed Schedule A supplement, if applicable;
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization;
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

In denying the petition, the director stated that, owing to the lack of documentation, "[t]he record does not establish that the United States employer is a religious denomination having a bona fide nonprofit organization in the United States."

On appeal, the petitioner asserts that the temple is a qualifying tax-exempt religious organization. The petitioner submits a copy of a "Notice of New Employer Identification Number" from the Internal Revenue Service. All employers, tax-exempt or not, are assigned Employer Identification Numbers; the possession of such a number is not evidence of tax-exempt status.

An Exempt Organization Certificate issued by the New York Department of Taxation and Finance shows that the petitioner is "exempt from payment of the New York State and local sales and use tax," but it does not and cannot show that the petitioner is exempt from federal income tax as a religious organization.

The record does not contain the documentary evidence required by regulation to establish qualifying status as a tax-exempt nonprofit religious organization. Therefore, the petitioner has not met its burden of proof and we affirm the director's finding.

The other issue in this proceeding relates to the beneficiary's past experience. The regulation at 8 C.F.R. § 204.5(m)(1) 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." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on August 3, 2005. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a pundit throughout the two years immediately prior to that date.

In a letter submitted with the initial filing of the petition, the beneficiary stated that he had served the petitioning temple "as an Intern Priest from December 29th, 2002 till the present time." Sita Ramnarace, Secretary of the petitioning organization, stated:

Collections and donations from members are made on a monthly basis and all sums collected are used to pay bills[,] pay the pundits and support the day to day running of the temple. . . . All workers are paid in cash from donations received by our mandir.

[The beneficiary] has been ordained in our temple on July 4, 2005, as a pundit/priest and he is given a stipend of Three Hundred dollars (\$300.00) weekly as compensation. Whenever his permanent residence status is granted to him he will be paid Four Hundred and Fifty Dollars (\$450.00) weekly. He also has over two years of voluntary service [at the temple].

A May 1998 certificate from the Trinidad Academy of Hinduism states that the beneficiary "has been admitted to CORPORATE MEMBERSHIP as a PUNDIT (HINDU PRIEST)." This document indicates that the beneficiary's priestly credentials predate his 2005 ordination.

In the December 1, 2005 RFE, the director requested evidence of past payments to the beneficiary. The director also stated: "If the [beneficiary's] past experience was gained on a volunteer basis, submit evidence that explains how the beneficiary supported herself/himself."

In response to the RFE, the petitioner submitted a letter jointly signed by [REDACTED] and [REDACTED] [REDACTED] respectively the petitioner's president and chairman of its board of trustees. The letter indicated: "The beneficiary has continuously two and a half years volunteering on his religious internship as a Pundit/Priest. . . . Beneficiary . . . was a volunteer and was not paid. There are no earning statements for 2003 and 2004 [for] the beneficiary." With regard to the beneficiary's work hours, the new letter indicates "Beneficiary is scheduled to perform 30 ½ hours in duties weekly." An accompanying schedule states "Total Hrs Per Week = 30 ½," but review of the items on the schedule indicates 31 hours: eight and a half hours on Sunday, eight on Tuesday, eight and a half on Thursday, and six hours on Saturday.

The letter indicated that the beneficiary “was a volunteer and was not paid. There are no earning statements for 2003 and 2004 [for] the beneficiary.” The letter also, however, indicated that the beneficiary “is being compensated by donations and food supplies [worth] approximately \$600 per week,” and that “Beneficiary will receive a salary of \$580.00/week when he obtains his residency.” These figures contradict the numbers provided by [REDACTED] who had previously indicated that the beneficiary “is given a stipend of . . . \$300.00 weekly” which would rise to \$450 per week once the beneficiary became a permanent resident. Regarding that official, the petitioner stated that [REDACTED] was removed because of dishonesty.”

A “General Ledger” lists numerous itemized expenses, including several payments under “Outside Services – Clergy,” but it shows no record of payments to the beneficiary. The petitioner stated that there is “No Payroll,” and that “Pundits are compensated by donations from members of our organization.” The petitioner’s Form 990 returns for fiscal years 2003 and 2004 also itemized the petitioner’s expenses, but listed nothing under “Compensation of officers” or “Other salaries and wages.” The petitioner did, however, claim to have spent \$11,760 on “Outside Services – Clergy” during the fiscal year ending September 30, 2005. The previous year, the petitioner claimed to have spent a much smaller amount on clergy, only \$1,900.

Monthly “Financial Reports” list the names of various pundits amongst the petitioner’s expenditures. These documents show payments to the beneficiary in the amounts of \$50 in May 2005, \$20 in August 2005 (marked “transportation”), and \$50 in October 2005. Because these amounts are far too low to support the beneficiary, it seems more likely that these payments represent reimbursement for expenses rather than compensation as such. Earlier reports show widely varying amounts (sometimes under \$100, sometimes over \$1,000) under the general term “Pundits,” with no indication of how the funds were distributed among the unspecified number of pundits.

An Audit Committee report dated December 5, 2005 and signed by five temple officials includes several recommendations, including “checks paid to anyone, contractor, priest, [or] caretaker should be made out in that Company name or Individual.” This indicates that the petitioning temple had been issuing checks to at least some of its priests. (The controversy was that many of these checks were payable to “Cash” rather than to the specific payees.) Another recommendation was that “All Pundits and Caretaker be issued a 1099MISC at the end of the year, as payment for services rendered is an income for that individual.” This indicates that the petitioner itself made and tracked payments to pundits. That these were still “recommendations” as late as December 2005 indicates that they had not been implemented before that time.

The director denied the petition on November 3, 2006, stating that the beneficiary’s past work for the petitioner does not constitute qualifying experience because, at 30 ½ hours per week, it was not full-time, and also because the petitioner “submitted a letter indicating that the beneficiary’s employment was **voluntary and he was not paid**” (director’s emphasis). The director added: “The record does not contain any evidence that the beneficiary has been compensated with a salary of any kind.”

With regard to the director’s assertion that the petitioner “submitted a letter indicating that the beneficiary’s employment was voluntary and he was not paid,” the director did not mention another passage in the same letter from [REDACTED] and [REDACTED] indicating that the beneficiary “is being compensated by donations and food supplies” donated “by members of our organization.” [REDACTED] on appeal,

asserts that this arrangement is in place only “until the INS approves the beneficiary’s residency” (the petitioner’s emphasis), and that the petitioner intends to place the beneficiary “on payroll” once the beneficiary possesses the proper authorization.

The Board of Immigration Appeals ruled that an alien who “receives compensation in return for his efforts on behalf of the Church” is “employed” for immigration purposes, even if that compensation takes the form of material support rather than a cash wage. See *Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982). Therefore, if the beneficiary received donations that were contingent on his work at the temple, then the beneficiary was not truly an unpaid volunteer.

At the same time, however, we cannot ignore that [REDACTED]’s statements contradict the petitioner’s previous claims. [REDACTED] originally asserted that the beneficiary received a weekly \$300 stipend, and that “[a]ll workers are paid in cash.” The petitioner has, therefore, made claims about the beneficiary’s compensation that are so inconsistent as to be outright contradictory. The director was correct inasmuch as there is no actual *evidence* of payments to the beneficiary, either from the temple or directly from members of the congregation. The record only contains conflicting *claims* regarding such payments. We cannot consider any of these conflicting and unsupported claims to be credible. Doubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 592.

Pursuant to the above, we find that, while the petitioner has always claimed that the beneficiary received some kind of support from the temple or its members, the details regarding that support have been so inconsistent that we cannot conclude, with any confidence, that the petitioner has credibly demonstrated that the temple (or its members) supported the beneficiary during the two-year qualifying period prior to the filing date.

The petitioner claims, on appeal, that “approximately 7-10 hours weekly of [the beneficiary’s] religious duties are performed at homes of devotees,” and therefore “the total number of hours that are assigned by the [petitioner] to the beneficiary totals 37 ½ hours to 40 ½ hours per week,” a full-time schedule. The petitioner asserts that Mondays, Wednesdays, and Fridays, not shown on the earlier schedule, are reserved for “‘house-call’ religious duties.”

The record contains no evidence that the beneficiary performs, or has performed, seven to ten hours of “‘house-call’ religious duties” each week, or that the petitioner inadvertently omitted three days from the weekly schedule submitted previously. Rather, in the letter accompanying the submission of that schedule, the petitioner had specifically stated: “Beneficiary is scheduled to perform 30 ½ hours in duties weekly.” The letter from [REDACTED] and [REDACTED] indicated: “Pundits are given assignment for House call to perform Funeral Services, Wedding services, Baptisms and Special poojas. Whoever calls for such services pay[s] the pundits/priest [at] the rate of \$45.00 per hour.” There was no indication, at the time, that

these assignments took up a substantial fraction of every work week. Indeed, there is good reason to conclude otherwise.

initially stated that the petitioning temple had roughly 350 members. The subsequent letter from and did not contain any specific membership figures, and a member list accompanying that letter was admittedly incomplete. It is not at all apparent that a congregation of 350 members would have enough weddings, baptisms and funerals to provide, on a consistent basis, seven to ten hours of additional work per week beyond what is shown on the schedule, particularly in light of repeated assertions by officials of the petitioning temple to the effect that the beneficiary is not the only pundit, or priest, available to officiate at weddings, baptisms, and other ceremonies.

We note that the petitioner has provided no objective evidence relating to the beneficiary's "house-calls." As the petitioner's credibility is already otherwise compromised, we are under no obligation to presume that the petitioner's assertions regarding the beneficiary's home visits are any more credible than the petitioner's contradictory claims regarding the beneficiary's past compensation. *Matter of Ho* at 591,592.

For the above reasons, we find that the petitioner's new claims regarding the extent of the beneficiary's off-site work lack credibility and corroboration. The assertion that the beneficiary performs just enough "house calls" to qualify his work week as full-time appears to be an *ad hoc* response to the denial. The petitioner has not overcome the director's finding that the beneficiary's work appears to have been part-time.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.