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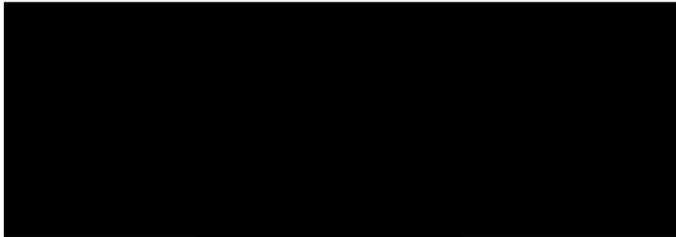
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



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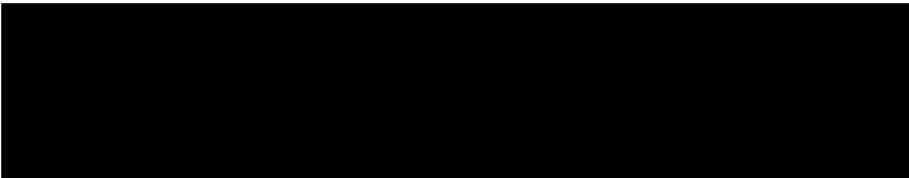


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **SEP 06 2007**
WAC 06 203 51428

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

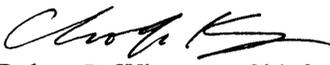
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



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.

for 
Robert P. Wiemann, Chief
Administrative Appeals Office

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

The alien beneficiary 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), to perform services as a priest at Guru [REDACTED] Sikh Temple in Fairfield, California. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a priest immediately preceding the filing date of the petition, or that the beneficiary's duties qualify him for classification as a special immigrant religious worker.

On appeal, the petitioner submits copies of previously submitted documents and a brief from counsel.

Part 1 of the Form I-360 petition identifies the temple as the petitioner. Review of the petition form, however, indicates that the alien beneficiary is the petitioner. An applicant or petitioner must sign his or her application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, Part 9 of the Form I-360, "Signature," has been signed not by any official of the temple, but by the alien beneficiary himself. Thus, the alien, and not the temple, has taken responsibility for the content of the petition.

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 consider the issue of the petitioner'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 June 19, 2006. Therefore, the petitioner must establish that he was continuously performing the duties of a priest throughout the two years immediately prior to that date.

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 (Sept. 19, 1990).

Precedent 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. See *Matter of Bisulca*, 10 I&N Dec. 712, 713-14 (Regl. Commr. 1963) and *Matter of Sinha*, 10 I&N Dec. 758, 760 (Regl. Commr. 1964). 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, with no compensation. See *Matter of Varughese*, 17 I&N Dec. 399, 402 (BIA 1980). See also *Matter of Faith Assembly Church*, 19 I&N Dec. 391, 393 (Commr. 1986) (special immigrant classification as a minister requires the alien to have been engaged "solely as a minister.")

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 paid, full-time basis. See *Hawaii Saeronam Presbyterian Church v. Ziglar*, 2007 WL 1747133 (9th Cir. June 14, 2007) (upholding AAO's requirement of full-time paid employment as a minister in accord with agency precedent).

In a letter accompanying the initial submission, [REDACTED] President of Guru Nanak Singh Temple, stated that the petitioner "has been voluntarily providing religious services to congregations at our temple since June 2004." [REDACTED] described the future compensation that the petitioner "will" receive in the future, including a \$700 monthly salary, room and board, but he did not indicate how the beneficiary supported himself between June 2004 and June 2006. The initial submission also included copies of the temple's bank statements from late 2005 and early 2006.

On December 13, 2006, the director issued a request for evidence (RFE), stating: "If any work was on a volunteer basis, provide evidence to show how the beneficiary supported himself . . . during the two-year period." In response, [REDACTED] stated: "As per Sikh religious tenets [the] Sikh Temple (Gurdwara) provides free food, shelter and cloth[e]s to priests. . . . Apart from that [the petitioner] gets a fixed remuneration from

[the] Sikh Temple every month. . . . [The petitioner's] position is full time with a monthly salary of 700.00 \$ [sic] since 06/01/2004."

The petitioner submitted copies of \$700 checks, labeled "Monthly Pay," issued to the petitioner and dated at monthly intervals from January 2006 through January 2007. The checks do not show any sign of having been presented for payment.

The petitioner also submitted a "Work History" containing the following information about his work since June 2004:

Asst. Priest

(Thu-Mon)

Nit Nem (Morning prayer)

5 AM – 6 AM

Katha (Sermon)

Religious teaching

Rehras (Evening Prayer)

7 PM – 9 PM

Kirtan & Samapti

(Hymns and last prayer of the day)

Assist in administrative work and social functions

(Fri-Sun)

Seva Akhand path (Service to Holy Scripture)

(Sun)

Teaching music and religious hymn singing

3 PM – 5 PM

The director denied the petition on March 8, 2007, stating that the above documents indicate that the petitioner "only works 21 hours in an average week" at the temple. The director also stated that Mr. Bains offered contradictory claims regarding the petitioner's past work, first calling him a volunteer, then claiming that he had received a salary since 2004. The director also noted that the purported salary checks date back only to January 2006, and "there is no evidence that these checks were cashed by the beneficiary." The director found that the petitioner had not satisfactorily explained how the petitioner supported himself throughout the 2004-2006 qualifying period. The director concluded: "the evidence is insufficient to establish that the beneficiary has been performing full-time work as a priest for the two-year period immediately preceding the filing of the petition."

On appeal, counsel does not contest the director's conclusion that the petitioner works only 21 hours per week. Counsel asserts that the director "arbitrarily interpreted the language of the relevant statute to mean that 'continuous employment' means full time work." Case law supports the finding that part-time work is not continuous. See *Hawaii Saeronam*, 2007 WL 174133; *Matter of Faith Assembly Church*, 19 I&N Dec. at 313; *Matter of Varughese*, 17 I&N Dec. at 402. Furthermore, [redacted] had previously described the petitioner's position as "full time." Rather than substantiate this assertion on appeal, counsel claims that the position need not be full-time. Counsel does not explain why this tactic does not impair [redacted] credibility.

Counsel questions the director's interpretation of the word "continuously" but offers no showing that the director's interpretation deviates from Congressional intent or from the case law identified earlier in this decision. Counsel is correct in stating that the statute itself does not define the term "continuously," but we must rely on some kind of operational definition if the term is to have any meaning at all. An agency is entitled to significant deference when interpreting the statute that it is charged with enforcing. *Az. State Bd. For Charter Schs.*, 464 F.3d 1003, 1006-07 (9th Cir. 2006); *Nev. Land Action Ass'n*, 8 F.3d 713, 717 (9th Cir. 1993). When Congress leaves the wording of the statute open to interpretation, the agency has the authority to interpret the statutory language. *Natural Res. Def. Council, Inc.*, 966 F.2d 1292, 1297 (9th Cir. 1992).

With regard to [REDACTED] seemingly contradictory statements that the petitioner has worked "voluntarily" but has collected a salary "since 06/01/2004," counsel states "[REDACTED] is not a scholar of the English language . . . he did not literally mean 'volunteering.'" The record contains no clarifying statement from [REDACTED] to support this argument. The assertions of counsel do not constitute evidence. See *Matter of Obaighbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). No one has suggested that [REDACTED] simply meant that the petitioner's work was "voluntary" as opposed to "compulsory."

Counsel asserts that the "sampling of checks made out to Beneficiary from the years 2006-2007 . . . indicate that Beneficiary is in fact working for the Temple." They do not indicate that such work took place prior to January 2006. Counsel does not respond to the director's observation that the checks, as reproduced in the record, show no sign of having been presented for payment. We note that the three earliest checks reproduced in response to the RFE are numbers 3641 (dated January 31, 2006), 3665 (dated February 28, 2006) and 3681 (dated March 31, 2006). As we have noted above, the petitioner's initial submission included copies of bank statements from early 2006. These statements show that check number 3641 was presented for payment on February 22, 2006; 3665 on March 9, 2006; and 3681 on April 5, 2006. Each of the checks was in the amount of \$700. Therefore, while the petitioner duplicated the checks before presenting them for payment, the record prior to the director's decision already contained persuasive evidence that the petitioner had cashed the checks. Earlier bank statements show additional \$700 checks in October, November and December 2005, but there is no direct evidence that the petitioner was the recipient of those checks.

Counsel argues that the temple did pay the petitioner since 2004, as [REDACTED] eventually claimed, but he states that the temple "did not have an affirmative obligation to provide pay stubs" to prove this claim. Counsel's logic is not persuasive, as the petitioner bears the burden of proof in these proceedings. Section 291 of the Act, 8 U.S.C. § 1361. The director had instructed the petitioner to submit evidence of material support throughout the qualifying period, and the petitioner failed to provide such evidence.

With regard to the claim that the temple has paid the petitioner a monthly salary since June 2004, the petitioner indicated on the Form I-360 petition that he had never worked in the United States without permission. On that same form, under "Current Nonimmigrant Status," the petitioner indicated that his status as a B-1 nonimmigrant visitor expired in May 2004, before the qualifying period began. If the petitioner ever worked for compensation in the United States, then he did so without authorization. Therefore, the record contains inevitable contradictions in the various claims regarding the petitioner's work and remuneration in

the United States. Section 204(b) of the Act, 8 U.S.C. § 1154(b), provides for the approval of immigrant petitions only upon a determination that “the facts stated in the petition are true.” False, contradictory, or unverifiable claims inherently prevent a finding that the petitioner’s claims are true. *See Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988).

The record contains no objective, contemporaneous documentary evidence to show the source or sources of the petitioner’s material support from June 2004 to December 2005. Contradictory claims from the petitioner and the temple prevent us from placing much credence in after-the-fact claims regarding the petitioner’s support during that period. We affirm the director’s finding that the petitioner has not shown that he was engaged continuously as a priest throughout the two-year qualifying period.

The remaining issue is whether the petitioner seeks to employ the petitioner in a qualifying position. The regulation at 8 C.F.R. § 204.5(m)(2) defines “minister” as “an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister.”

In his initial letter, [REDACTED] stated that the petitioner “is duly authorized under Sikh religious principle[s] to conduct worship, services, and all other regular duties of [a] Sikh minister such as baptism, weddings, funerals, etc.” [REDACTED] described the petitioner’s work in greater detail:

He has conducted morning and evening religious ceremonies by . . . reading and interpreting passages of our holy book, Sri Guru Granth Sahib as well as other sacred literatures. He [has led] the congregation in prayers. He has performed baptism ceremonies. He has lectured [the] congregation on Sikh religious history, customs and culture. He sings religious hymns [to] our congregation and has provided counseling to the member[s] of our religious community both at our temple as well as parishioner’s homes. [The petitioner] has also provided training to the children of our congregation. Each Sunday he lectures the Sikh children about the Sikh religious history, customs, culture and taught children on our native religious Punjabi language. He also reads religious scriptures to them from our holy literature.

[REDACTED] added: “Our committee has observed [the petitioner] and reviewed his credentials and religious training,” although the petitioner’s initial submission contained no evidence or information regarding the petitioner’s “credentials and religious training.”

In the RFE, the director requested “evidence to show that the beneficiary has been ordained and the requirements for ordination.” In response, [REDACTED] stated: “Being a graduate from [REDACTED] [the petitioner] is highly qualified to meet our needs for the present position.”

The petitioner submitted copies of documents from [REDACTED] indicating that the petitioner “successfully completed his training as a Sikh Priest” there. The petitioner also submitted a “Job Description,” containing the following information:

Title Assistant Priest (Musical Exponent)

* * * * *

Summary of essential job functions

(Thu-Mon) Nit Nem (Morning Prayer) 5 AM – 6 AM

Religious Music Teaching

Rehras (Evening Prayer) 7 PM – 9 PM

Kirtan & Samapti (Hymns and last prayer of the day)

Play musical instrument Tabla during services

Assist in administrative & social work

Preparation and participation in religious processions

Representing Guru [REDACTED] Sikh Temple in inter/intra religious meetings

Help on community kitchen

Help in conducting other socio religious ceremonies like birth marriage and death.

Minimum requirements

High school

Certified by religious music school

Experience – Minimum one year of experience in Sikh Temple Services

Several accompanying photographs show the petitioner seated in a group of musicians. Every photograph shows the petitioner playing a musical instrument.

In denying the petition, the director found that the petitioner had failed to establish the significance of the petitioner’s education at [REDACTED]. The director concluded that the petitioner’s “job duties consist of performing prayers, musical services, administrative tasks, participation in religious processions, helping in the kitchen, and helping in conducting ceremonies,” and that “the evidence is insufficient to establish that the beneficiary’s activities relate to the religious calling of being a minister.”

On appeal, counsel asserts that the director overemphasized the petitioner’s ancillary duties such as administrative tasks, and played down “tasks [that] exemplify the role of a Sikh priest.” It is true that a nominal amount of administrative duties should not, by themselves, disqualify the petitioner. At the same time, the petitioner has not helped matters by submitting what appear to be divergent or contradictory accounts of his position. On the one hand, the petitioner was described as a “priest” who earned his qualifications by studying at [REDACTED]. On the other hand, the “Job Description” calls the petitioner an “Assistant Priest (Musical Exponent)” and lists only three “Minimum requirements”: “High School,” “Certified by religious music school” and “one year of experience in Sikh Temple Services.” The petitioner has submitted no objective documentary evidence to show that musical training qualifies one for the priesthood in the Sikh religion.

Some materials in the record indicate that the petitioner is to lead religious services; other evidence shows him basically providing musical accompaniment. Because of these conflicting and contradictory assertions, we cannot find with any confidence that the petitioner has persuasively established just what it is that he has done and will be doing at the temple. In the face of such uncertainty, we are under no obligation to arrive at the interpretation or conclusion that is most favorable to the petitioner. Similarly, it can be said that the different versions of the petitioner's duties are each religious in nature, but this does not compel a favorable conclusion on the grounds that the petitioner has consistently claimed religious duties even if he has not been consistent in describing what those duties are.

We emphasize that, in issuing this order, the AAO is not making a finding that the petitioner is definitely ineligible for the benefit sought. Rather, we find that the petitioner has not met his burden of proof by submitting credible and consistent evidence of eligibility. The contradictions in the record undermine our confidence in the remainder of the petitioner's submissions. 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, 591 (BIA 1988).

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.