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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **MAY 06 2008**
WAC 07 027 52974

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:

[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.

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 on appeal. The appeal will be dismissed.

The petitioner is a Vedic 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 the requisite two years of continuous work experience as a priest immediately preceding the filing date of the petition, or that the beneficiary is fully qualified to perform the duties of a priest.

On appeal, the petitioner submits arguments and new exhibits. The petitioner indicates that a brief will be forthcoming within 30 days. To date, six months after the filing of the appeal, the record contains no further substantive submission from the petitioner. We therefore consider the record to be complete as it now stands. The record contains no evidence that counsel participated in the preparation or filing of the appeal.

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 first issue under consideration concerns 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 October 12, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a priest throughout the two years immediately prior to that date.

Swami Omkarananda, Director of the petitioning temple, stated that the beneficiary “has been practicing his priestly duties for more than three years at well known temples like Sri Krishna Temple in Bangalore (Edannur Matt),” and began working for the petitioner “on February 6, 2003.” He stated that the temple “conducts three worship services daily – Sunday school, Hindu rites for family occasions, and Festival celebrations,” as well as “concerts, festivals, retreats, weekend programs, and children’s programs” and “instruction in music, philosophy, literature, art, yoga, Sanskrit meditation and puja (techniques of worship).”

Regarding the beneficiary’s activities at the temple, stated that the petitioner “has performed the following duties as a Priest:”

1. Daily Religious Worship in the Temple based on the Vedic rituals.
2. Conducting prayers and religious discourses from the Vedas and Puranas.
3. Teaching the Sanskrit language.
4. Teaching how to conduct religious prayers based on the Vedic rituals.
5. Teaching the Sanskrit language and Religious Rituals for Sunday school students at the temple.
6. Conducting prayers and rituals at devotees’ homes.
7. Conducting Hindu Cultural classes for adults and children in the Temple and at devotees’ homes.
8. Providing counseling to those who need spiritual and mental guidance.
9. Performing religious festivals in the Temple.
10. Clean and maintain the Temple surroundings.
11. Cook and feed the devotees and others who come to the Temple.
12. Perform daily meditation and yoga.

The petitioner submitted copies of numerous newspaper articles about the temple. The AAO can find no mention of the beneficiary in the articles dated after the petitioner’s 2003 arrival.

On December 11, 2006, the director issued a request for evidence (RFE), instructing the petitioner to submit “evidence of the beneficiary’s work history for the years 2004, 2005 and 2006,” including “a breakdown of duties performed . . . [during] an average week.” In response, the petitioner repeated the list reproduced above. The petitioner also submitted a copy of the beneficiary’s Internal Revenue Service (IRS) Form 1040 federal income tax return for 2006, and IRS Form 1040X amended returns for 2004 and 2005. All of these returns were prepared on the same day, February 21, 2007. The beneficiary changed his adjusted gross income from \$3,049 to \$15,247 in 2004, and from \$3,137 to \$14,382 in 2005. He claimed gross receipts of \$20,000 in each of those two years. In 2006, the beneficiary claimed \$19,000 in gross receipts and \$13,428 in adjusted gross income. On all these forms, the beneficiary identified his occupation as “Priest.”

The petitioner also submitted copies of IRS Form 990 returns for 2005 (dated December 31, 2006) and 2006 (dated February 27, 2007). These returns indicate that the petitioner’s “Priest Expenses” amounted to

\$20,000 in 2005 and \$19,001 in 2006. [REDACTED] is identified as the preparer of the 2006 Form 990 and all of the beneficiary's income tax returns.

None of the tax documents described above existed during the qualifying period. All of them were created shortly after the December 11, 2006 issuance of the RFE. These amended returns do not carry the same evidentiary weight as contemporaneous documentation of wages or support paid to the beneficiary. Like a delayed birth certificate, the amended tax returns and the timing thereof raise serious questions regarding the truth of the facts asserted. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991) (discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings). The petitioner did not explain why, if the petitioner paid the beneficiary \$20,000 per year in 2004 and 2005, neither the petitioner nor the beneficiary apparently mentioned this information on any tax returns until just after the director requested such information.

On June 20, 2007, the director issued a second RFE, again requesting specific information about the beneficiary's work history, duties performed, and compensation received during the two-year qualifying period immediately preceding the petition's filing date. The director also requested IRS verification of the information shown on the untimely tax forms described above, and copies of "the petitioner's California Employment Development Department (EDD) Form DE-6, Quarterly Wage Reports for all employees for the last 4 quarters."

In response, Swami Omkarananda stated that the beneficiary "has performed and will continue to perform the following duties, as a Priest:"

1. Daily Religious Worship in the Temple based on the Vedic rituals
2. Conducting Prayers and religious discussions on Vedic literature
3. Teaching Sanskrit and Hindi languages as well as religious prayers for Sunday School students at the temple
4. Conducting worship and rituals at devotees' homes for house warming, naming ceremonies, wedding ceremonies, fire ceremonies (homa), funeral services, etc.
5. Performing religious festivals in the temple
6. Performing specialized Vedic Chanting (recitation of Vedic hymns)
7. Assist in the maintenance of the temple library
8. Clean and maintain the temple
9. Organize the cooking and serving of food to the devotees after Sunday Services and on other festival days
10. Rendering services during multi-cultural program celebrations.

Regarding the schedule of these events, [REDACTED] stated:

Religious worship is held every day at 7 AM to 8 AM. Prayers and religious discussions are held between 9 AM and 12 Noon, based on individual request[s] and prayers from devotees and patrons.

. . . Teaching Sanskrit and Hindi languages as well as religious prayers for Sunday School students at the temple [are] conducted every Sunday from 10:30 AM to 12 Noon, to children of temple devotees.

Other described activities were said to take place “as needed” rather than according to any fixed schedule.

Regarding the beneficiary’s compensation, the petitioner submitted copies of EDD Forms DE-6 for the first and second quarters of 2007, showing that the beneficiary received \$6,000 in each of those two quarters. Although the director had requested the quarterly returns for the past four quarters, the petitioner did not submit the other two requested quarterly returns or explain this omission.

Photocopies of checks reflect the following claimed payments to the beneficiary:

January 2, 2004	\$1,000.00	
April 3, 2004	1,500.00	
May 17, 2004	4,000.00	
September 13, 2004	1,000.00	
<u>November 30, 2004</u>	<u>1,117.30</u>	<u>Total for 2004: \$8,617.30</u>
January 3, 2005	700.00	
February 3, 2005	600.00	
April 25, 2005	1,000.00	
June 1, 2005	1,000.00	
July 6, 2005	1,025.00	
<u>September 19, 2005</u>	<u>2,100.00</u>	<u>Total for 2005: \$6,425.00</u>
January 3, 2006	1,000.00	
May 21, 2006	2,001.00	
<i>July 10, 2006</i>	<i>2,000.00</i>	
<i>July 23, 2006</i>	<i>2,000.00</i>	
<i>August 5, 2006</i>	<i>2,000.00</i>	
<i>September 12, 2006</i>	<i>2,000.00</i>	
October 26, 2006	2,000.00	
<i>November 6, 2006</i>	<i>2,000.00</i>	
<u><i>December 5, 2006</i></u>	<u><i>2,000.00</i></u>	<u>Total for 2006: \$17,001.00</u>
<i>March 1, 2007</i>	<i>1,612.38</i>	(Check number 1)
<i>March 1, 2007</i>	<i>1,612.38</i>	(Check number 2)
March 30, 2007	1,612.38	
April 30, 2007	1,612.38	
May 31, 2007	1,612.38	
June 30, 2007	1,612.38	
<i>July 30, 2007</i>	<i>1,612.38</i>	

Checks shown in *italics* are not marked as having been processed for payment. The above information indicates that the beneficiary was paid erratically prior to mid-2006, and there is no evidence that many of the

checks from after that period were processed for payment. The petitioner submitted copies of the front pages of numerous bank statements dated between January 2004 and July 2007, but these partial copies do not list all checks issued during that period and therefore are not evidence of payment. Part of the copy of the December 29, 2006 statement appears to have been obscured; in an area where most copies show "Account Activity," that statement shows only a large blank space.

The even amounts of the pre-2007 checks, coupled with the petitioner's failure to submit quarterly returns from 2006, indicates that the petitioner did not withhold the required taxes from the beneficiary's pay prior to 2007. The EDD Forms ED-6 indicate that the petitioner paid the beneficiary \$6,000 per quarter, of which \$88.11 was withheld. According to those numbers, the beneficiary's net pay should have been \$1,970.63 per month. The checks for \$1,612.38 each therefore do not match the quarterly returns. The petitioner did not acknowledge or account for the discrepancy.

Photocopied IRS Form 1099-MISC Miscellaneous Income statements indicate that the petitioner paid the beneficiary \$20,000 in 2004, \$24,000 in 2005 and \$19,000 in 2006. In contrast, the checks listed elsewhere in this decision show only \$8,617.30 in 2004, \$6,425.00 in 2005 and \$17,001.00 in 2006. Also, the total for 2005 does not match the amount claimed on the beneficiary's amended 2005 income tax return.

The petitioner also submitted copies of letters from members of its congregation, attesting in general terms to the beneficiary's work there and at parishioners' homes.

The director denied the petition on September 26, 2007, stating:

The beneficiary's schedule . . . indicates that he works approximately 10 hours a week for daily worship and Sunday school teaching duties. The other duties . . . either are not regular, only performed when there are the devotees' requests or contain no specific number of hours. The remaining duties "clean and maintain the temple, organizing the cooking, maintain the temple library" do not appear to be related to a traditional religious function. Finally, the petitioner has failed to submit Form DE-6, Quarterly Wage Reports for the last four quarters to show that the beneficiary has been employed continuously by its organization. Only two quarterly wage reports were submitted with this response.

As such, the evidence is insufficient to establish that the beneficiary has been working continuously for the two-year period and in the same capacity as a priest immediately preceding the filing of the petition.

We note the director's observation that some of the beneficiary's described duties are non-religious, but we do not find this to be an inherently disqualifying factor. It is expected that a member of the clergy might have some administrative or otherwise secular duties within the context of his or her ministerial work.

On appeal, _____ states: "Beneficiary works daily from 7:00 AM to 12:00 Noon and 5:00 PM to 8:00 PM performing religious worship, prayers and religious discussions, teaching Sanskrit and Hindi languages at the temple. One day off is taken during the week. Remaining time, beneficiary performs

religious ceremonies at devotees' homes." The petitioner's statement on appeal is the first specific claim that the beneficiary works evening hours.

then states: "Beneficiary filed his taxes in years 2004, 2005 and 2006 using 1099 [forms] that [were] issued by the temple. Year 2007, Beneficiary is given wages and his income will be reported on W-2." [REDACTED] states that, because of the recent change in the manner of compensation, quarterly returns are not available for 2006.

As described above, there are some variations in the petitioner's descriptions of the beneficiary's duties. More significant are the discrepancies in the various materials submitted to establish the beneficiary's past compensation. The beneficiary's compensation prior to 2006 was erratic, and therefore inconsistent with continuous employment. Because the checks and tax forms reproduced in the record are not consistent with one another, and because the checking account statements do not establish that the beneficiary was compensated on a full-time basis, further questions of credibility arise. 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). 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, 591-92.

The available evidence indicates that the beneficiary has some kind of employment history with the petitioner, but because of gaps and contradictions in the evidence submitted, we cannot conclude that the petitioner has satisfactorily established the beneficiary's continuous employment throughout the two-year qualifying period. The AAO hereby affirms the director's finding in this regard.

The remaining issue concerns the beneficiary's qualifications for the position sought. 8 C.F.R. § 204.5(m)(3)(ii)(B) requires the petitioner to establish that the alien has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy.

[REDACTED], in the introductory letter accompanying the initial filing, stated:

[The beneficiary] possesses all the required qualifications, including formal priest training for four years, which included RUGVEDA SAMHITA studies from Maharishi Veda Vijnana Peeta, Udupi and SAMHITA-PURVANGA PRAYOGA from Brahmi Durga Parameshwari SAVEDA Sanskrita Peta Shala, Kamalashile, Kundapura.

In the December 11, 2006 RFE, the director requested "evidence that the [beneficiary] has authorization to conduct religious worship and perform other services usually performed by members of the clergy." In response, [REDACTED] stated: "Vedic Hindu religious practice does not have formal ordination procedures. The requisite education and training authorizes an individual to conduct religious worship, lead a religious congregation, and perform religious services. . . . [The beneficiary] has met all these educational and training requirements." Copies of certificates indicate that the beneficiary studied Rugveda, Veda, and other courses at various temples and other institutions in India from 1996 to 2001.

In the second RFE, the director requested clarification as to “whether the beneficiary will be working in a vocational capacity or a ministerial capacity.” The director also requested “a detailed explanation of the requirements for becoming a priest.” In response, ██████████ stated: “The minimum education, training, and experience necessary for the position of Hindu priest is completion of formal priest education for four years and two years experience in the religious vocation.” ██████████ then repeated the description of the “formal priest training” found in the initial submission.

In denying the petition, the director stated that the petitioner had failed to submit a “detailed description of the courses” that the beneficiary took in order to qualify as a priest. The director also found that the petitioner failed to establish that “the beneficiary had completed these courses.” The director therefore found “the evidence is insufficient to establish that the beneficiary is qualified in the religious occupation.”

On appeal, the petitioner submitted copies of “beneficiary’s certificates from various schools in India where the beneficiary received his education and training to become a Hindu priest.” Among these materials are three similarly-formatted documents that purport to be transcripts from three different schools in India where the beneficiary studied between 1996 and 2000. The transcripts were allegedly issued in the English language; therefore, the typographical errors are not based on the work of a common translator. All three documents contain identically-worded portions; most significantly, all three documents contain the same misspelling of the year of the beneficiary’s birth: “NINTEEN EIGHTY-ONE.” Other numbers are misspelled as well (“FOURTY” and “NINTY”).

The presence of the same spelling error on all three documents casts doubt on their supposedly independent origin, which raises further doubts about the overall credibility of the petitioner’s claims and the evidence submitted, pursuant to *Matter of Ho*. Also, the certificate purportedly from Shri Brahmi Durga Parameshwari Temple contains arithmetical errors. A table on that certificate reads:

Subjects	Marks		Marks Obtained
	Maximum	Minimum	
Astaka- 1	100	40	90
Astaka- 2	100	40	91
Astaka- 3	100	40	78
Astaka- 5	100	40	89
Veda Prayoga	100	40	93
Total Marks	400	160	441

The total under “Maximum Marks” should read 500, not 400. An unidentified person made this correction in pen. The total under “Minimum Marks” is also incorrect; it should be 200 rather than 160. In addition to the misspelled “NINTEEN,” this certificate also contains the misspelled word “FOURTY.”

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. I.N.S.*, 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).

Credibility issues arising from materials submitted by the petitioner prevent a finding that the petitioner has submitted credible evidence sufficient to meet its burden of proof. The AAO therefore affirms the director's finding regarding the beneficiary's credentials and qualifications as a priest.

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.