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U.S. Department of Homeland Security  
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Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

MAR 22 2004

IN RE:

Petitioner:

[REDACTED]

Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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 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 immigrant visa petition was denied by the Director of the Vermont Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On June 22, 2001, the petitioner filed the current petition seeking 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 "religious priest." Here, the director determined that the petitioner had not established that it is a bona fide nonprofit religious organization. The director also determined that the petitioner had not established that the proffered position qualifies as that of a religious worker or that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two years immediately preceding the filing date of the petition. Finally, the director determined the petitioner had not established that it had the ability to pay the beneficiary the proffered wage.

The record shows that the petitioner filed a prior Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, seeking to classify the beneficiary as an "interfaith priest" on July 6, 1998.

On June 15, 1999, the director determined that the petitioner had failed to establish that it was a bona fide nonprofit religious organization. The director also determined that the petitioner had not established that it had the ability to pay the beneficiary the proffered wage.

On July 20, 1999, the petitioner filed an appeal from the denial of the petition.

On September 21, 1999, the director considered the appeal as a motion to reopen. The director determined that the petitioner had demonstrated that it is a bona fide nonprofit religious organization and had, therefore, overcome that ground for denial of the petition. The director further affirmed his prior decision based on a finding that the petitioner had failed to demonstrate that it had the ability to pay the beneficiary the proffered wage. The petitioner did not file an appeal from the director's decision.

On appeal to the November 8, 2002, decision of the director, counsel submits 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).

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.

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

The first issue raised by the director is whether the petitioner has established that it is a bona fide nonprofit religious organization.

Pursuant to 8 C.F.R. § 204.5(m)(3)(i), each petition for a special immigrant religious worker must be accompanied by evidence that the organization qualifies as a nonprofit 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. . . .; 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....

To satisfy the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required.

The director noted that the IRS tax exemption letter submitted with the petition was not addressed to the petitioner at the address listed on the petition. The director stated that the petitioner had not provided any evidence to establish that the IRS is aware of Interfaith League of Devotees at its current address. The director, therefore, determined that the petitioner had not established that it is a bona fide nonprofit religious organization.

The petitioner has not provided an IRS letter recognizing the petitioner as exempt from taxation under section 501(c)(3) of the Internal Revenue Code (IRC) at its current address.

On appeal, counsel submits a New York State Form ST-119, Exempt Organization Certificate, recognizing the petitioner as exempt from New York State and local sales and use taxes. The New York State exemption certificate is insufficient to demonstrate that the petitioner is exempt from taxation under section 501(c)(3) of the IRC as it relates to religious organizations. That document relates only to the petitioner's tax exemption status in

the State of New York. In response to the director's request for additional evidence, the petitioner provided a copy of a sales contract relating to the purchase of the property at its current address and a letter to the IRS dated October 17, 1994, informing the IRS of its change of address. Although it has been nearly ten years since the petitioner moved to its current address, the petitioner has failed to provide a document from the IRS acknowledging its recognition of the organization listed at the petitioner's address as exempt from taxation under section 501(c)(3) of the IRC as it relates to religious organizations.

In the alternative, to satisfy the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the IRC as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement that applies to churches, and a copy of the organizing instrument of the church which contains a proper dissolution clause and which specifies the purpose of the organization. In this case, the petitioner has provided a copy of its Articles of Incorporation. The petitioner has not, however, provided a completed IRS Form 1023 with the required supporting documentation and the Schedule A supplement that applies to churches. It is noted that the dissolution clause as it appears in the petitioner's Articles of Incorporation is not a proper dissolution clause. The clause indicates partial distribution of assets for "necessary expenses" prior to distribution of the remaining funds, and also limits the distribution of the funds. The petitioner has not established that it is a bona fide nonprofit religious organization, and the petition must be denied for this reason.

The second issue raised by the director is whether the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two years immediately preceding the filing date of the petition.

The petition was filed on June 22, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a religious vocation or occupation from June 22, 1999 until June 22, 2001.

The petitioner provided a letter dated October 9, 1989, from Hariyogam Paramanatham of the Interfaith Understanding Centre in Perak, West Malaysia, stating that the beneficiary served that temple as a priest from September 24, 1988, to September 23, 1989.

The petitioner also provided a letter dated December 23, 1997, from Bhakti Yoga Swami, Chief Priest of Nab Madhuban Ashram in Hrishikesh, India, stating that the beneficiary served that temple as a full-time "interfaith priest" during 1995.

In a letter dated June 14, 2001, R.V.C. Swami of the Interfaith League of Devotees, stated:

[The beneficiary] worked as an Interfaith Priest with the Indian Organization, for two years, from 09/95 until 09/97. She traveled to learn the needs of other countries and always had a[n] interest in expanding his [sic] knowledge of how to serve more and more in as many different ways as possible, through her actions, her words and even her thoughts. . . ;

[The beneficiary's] strong background and experience (**more than 2 years**) as mentioned above, meets the minimum requirement for granting Permanent Residency Application as a Religious Worker. (Emphasis in original.)

Although the petitioner asserts that the beneficiary has more than 2 years of experience in the same religious vocation or occupation, the petitioner has not provided any evidence to establish that the beneficiary was engaged continuously in a qualifying religious vocation or occupation during the requisite two-year period ending June 22, 2001. Simply going on record without supporting documentary evidence is not sufficient for meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Therefore, the petitioner has not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two years immediately preceding the filing date of the petition, and the petition must also be denied for this reason.

The third issue raised by the director is whether the petitioner has established that the proffered position qualifies as a religious vocation or occupation.

The term "religious occupation" is defined at 8 C.F.R. § 204.5(m)(2) as follows:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function," but instead provides a brief list of examples. A review of the list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. The non-qualifying positions are those that are primarily administrative or secular in nature, such as janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The AAO interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed or beliefs of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination or the petitioning religious organization.

The petitioner describes the duties of the offered position as follows:

- (1) [The beneficiary] will prepare for worship ceremonies like washing the idols, adorning it, performing the initial rites, etc.
- (2) Perform the marriage rites, death anniversaries, spiritual cleansing etc.
- (3) Read the holy books like Gurugranth Sahib Bhagavath Gita, Srimad Bhagavatham, Ramayana and Holy Bible.
- (4) Help in the Organization of interfaith festivals for peaceful dialogue between local religious segments.

In a document that accompanied the initial petition, the petitioner described the beneficiary's weekly schedule as follows:

Monday - Friday

|                    |  |
|--------------------|--|
| 4:30 am - 5:00 am  | Altar service worship  |
| 5:00 am - 6:30 am  | Rosary Japa Meditation   |
| 6:30 am - 7:00 am  | Aratik choir Worship   |
| 7:00 am - 8:00 am  | Discourse on Srimad Bhagavatam Teachings of Buddha, The Gita, etc. |
| 10:00 am - noon    | Vegetarian cooking and cooking class                               |
| 3:00 pm - 5:00 pm  | Spiritual Healing  |
| 6:00 pm - 7:00 pm  | Sandhya Arotik-evening worship                                     |
| 8:00 pm - 9:00 pm  | Dressing the deities   |
| 9:00 am - 10:00 pm | Religious counseling   |

Sunday

|                |  |
|----------------|--|
| Noon - 2:00 pm | Social Community Services like feeding homeless, taking care of spiritual needs of elderly, etc. |
|----------------|--|

On appeal, the petitioner has provided the following, revised description of the beneficiary's daily schedule:

|                   |   |
|-------------------|---|
| 5:00 - 7:00 A.M.  | Mantra Meditation (priest's private prayers)  |
| 6:00 - 8:00 A.M.  | Worship of Gaura-Nitai icons (2 separate sacred statues), cleaning and dressing of the icons, adornment with jewels and fresh garlands of flowers |
| 8:00 - 9:00 A.M.  | Prepare breakfast offerings for the altar, and chanting of appropriate mantras  |
| 9:00 - Noon       | Private time  |
| 12 - 12:30 P.M.   | Noon offering and prayers   |
| 12:30 - 1:30 P.M. | Lunch break   |
| 1:30 - 4:30 P.M.  | Congregation and guest poojas. . .  |
| 4:30 - 5:30 P.M.  | Break   |
| 5:30 - 7:00 P.M.  | Community meal  |
| 6:30 - 9:00 P.M.  | Individual projects, meetings, etc.   |

The revised description of the beneficiary's schedule makes no mention of duties that were listed in the initial description, such as discourse on religious teachings, vegetarian cooking, teaching a vegetarian cooking class, Aratik choir worship, spiritual healing, spiritual counseling, and community service projects. The petitioner has not provided any explanation for these discrepancies in the listing of the beneficiary's proposed duties and schedule. 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. Further, it is incumbent on 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 lies will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

The petitioner has not provided any evidence to show that the duties of the position are directly related to the religious creed or beliefs of the religious organization. On appeal, the petitioner submits a copy of the minutes of a board meeting of the Interfaith League of Devotees that took place on January 29, 2002. According to the minutes of that meeting, the petitioner established temple positions "in order to maintain the highest quality service to the Deities in the temple by regular and specific worship." The list of positions created is as follows: Head priest, Radha-Krsna Priest, Jaganatha Priest, Gaura Nitai Priest, Narasimha Priest, Saligram Sila Priest, Assistant Priests, and Quan Yin Priest. It appears that the beneficiary would be classified as a

Gaura Nitai priest, but there is no statement in the minutes of the Board meeting that the newly established positions are traditional religious functions or that they are permanent, full-time, salaried positions within the religious organization. Furthermore, this board meeting took place on January 29, 2002, approximately six months **after** the filing date of the petition. This document cannot be accepted as evidence to show that the proffered position qualifies as a religious vocation or occupation. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The petitioner has not established that the position is traditionally a permanent, full-time, salaried occupation within the religious organization. In view of the foregoing, it is concluded that the petitioner has not established that the proffered position qualifies as a religious vocation or occupation, and the petition must also be denied for this reason.

The final issue raised by the director is whether the religious organization has had the ability to pay the beneficiary the proffered wage since the filing date of the petition.

Pursuant to 8 C.F.R. § 204.5(g)(2):

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.

Although the petitioner provided its financial statement for the period ending December 31, 2001, this document is insufficient to show that the petitioner has the ability to pay the beneficiary the proffered wage because it is not an audited statement. A representative of the accounting firm that prepared the statement specifically states in the accountants' report:

A compilation is limited to presenting, in the form of financial statements, information that is the representation of management. We have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any other form of assurance on them.

Management has elected to omit substantially all of the disclosures required by generally accepted accounting principles. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the Company's financial position, results of operations, and cash flows. Accordingly, these financials statements are not designed for those who are not informed about such matters.

The petitioner has not furnished the foundation's annual reports, federal tax returns, or audited financial statements as required. Therefore, the petitioner has not demonstrated that it has the ability to pay the beneficiary the proffered wage of \$20,000. For this additional reason, the petition may not be approved.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified for the position within the religious organization. The petitioner has not provided evidence demonstrating the requirements the beneficiary had to satisfy in order to qualify as a religious priest in the religious organization and explaining how the beneficiary satisfied such requirements as required at 8 C.F.R. § 204.5(m)(3)(ii)(D). Additionally, the petitioner has not established that it has extended a valid job offer to the beneficiary as required at 8 C.F.R. § 204.5(m)(4). The petitioner has not provided a letter from an authorized representative of the religious organization in the United States stating how the beneficiary will be paid or remunerated and clearly

indicating that the beneficiary will not be dependent on supplemental employment or solicitation of funds for support. As the appeal will be dismissed for the reasons discussed, these issues will not be addressed further in this proceeding.

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.