U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

C-1

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JUL 7 2004

IN RE: Petitioner: [redacted]
Beneficiary:

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was approved by the Director of the Texas Service Center. Upon further review, the director determined that the beneficiary was not clearly eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of her intent to revoke approval of the visa petition and the reasons thereof, and ultimately revoked the approval of the petition. The case is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner indicates that it is a Hindu temple. It seeks classification of 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 Hindu priest.

The petition was initially approved on March 6, 1996. The director subsequently determined that the petition had been approved in error. On June 19, 2002, the director issued a notice informing the petitioner of her intent to revoke approval of the petition based on a finding 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 date of the petition. This determination was based on adverse information subsequently obtained by Citizenship and Immigration Services (CIS) indicating that the evidence submitted to demonstrate that the beneficiary's qualifications and experience as a Hindu priest was fraudulent and that the beneficiary was not, in fact, a full-time, salaried Hindu priest throughout the two-year qualifying period. The petitioner was granted thirty days to provide additional evidence to overcome the stated grounds for revocation of approval of the petition.

On October 15, 2002, the director revoked approval of the petition, stating that the evidence submitted in response to the Notice of Intent to Revoke was not sufficient to overcome the grounds for revocation of approval of the petition.

On appeal, counsel submitted a statement. Counsel indicated that additional evidence would be submitted within thirty days of the filing date of the appeal. To date, no brief or additional documentation has been received. Therefore, the record shall be considered complete.

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).

Pursuant to 8 C.F.R. § 204.5(m)(1):

> 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.

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

Pursuant to 8 C.F.R. § 204.5(m)(1):

> 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.

The petition was filed on November 21, 1995. Therefore, the petitioner must establish that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation during the period from November 21, 1993 to November 21, 1995.

The record shows that the beneficiary entered the United States on August 4, 1993, as a nonimmigrant B-2 visitor with stay authorized to February 3, 1994. He has remained in the United States in unlawful status since that date. The petitioner indicates on the Form I-360, Petition for Amerasian, Widow or Special Immigrant, that the beneficiary has worked in the United States without authorization. Specifically, the petitioner stated that the beneficiary worked for Dekalb Farmer's Market in Decatur, Georgia, as a part-time systems administrator from September 1993 to December 1993. The petitioner further stated that the

beneficiary has worked part-time as a motel night auditor for an in Decatur, Georgia, since January 1994. The petitioner explained:

> The reason [the beneficiary] worked part-time without permission was that he had been actively involved in the religious teachings of the and was hoping to eventually become a priest. He had to support his family in the meantime, and could only do so by taking night jobs, while attending religious ceremonies during the day.

The petitioner provided copies of the beneficiary's Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statements, for 1993 and 1994. According to these documents, the beneficiary was paid $6,355.02 by t in 1993 and $14,180.50 by in 1994. In a letter dated November 2, 1995, who identified himself as the President of the Indian (IACA), stated:

> [The beneficiary] is well qualified to hold this position. He is learned in the religious procedures and activities and has actively participated in this temple's religious activities since September 1, 1993.

The record contains the beneficiary's Form G-325, Biographic Information, in which he stated that he worked as a priest in from January 1991 to June 1993. The beneficiary further stated that he worked at the doing data processing work from September 1993 to December 1993 and that he has worked as a part-time night auditor at the in Decatur, Georgia, since January 1994. It is noted that the beneficiary did not indicate that he had been working as a priest for the petitioning organization, or any other religious organization, during the period from 1993 to 1995.

The record also contains a letter dated April 22, 1998, from Treasure of IACA, in which he stated:

> This is to certify that has been working as a priest at the IACA temple since November 1995.

In a letter dated March 15, 1996, from then President of IACA, stated:

> This is to certify that [the beneficiary] is working as a full time priest of our India cultural and Religious Center temple. . . .
>
> He offers daily religious services in the temple, as well as leading religious services on special religious days.

In a letter dated January 8, 1997, Treasure of IACA, stated:

> This verifies that has been employed at the India American Cultural Association as Priest at its religious center, from December 1, 1995.

His annual remuneration for the Calendar Year 1996 was $11,085.86.

The record contains the beneficiary's 1996 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, showing that the beneficiary was paid $11,085.86 in that year.

Subsequent to the approval of the petition, Citizenship and Immigration Services (CIS) received adverse information indicating that the beneficiary had obtained lawful permanent resident status through fraud, and that he was not a full-time, salaried Hindu priest throughout the two-year qualifying period. Specifically, CIS received a letter dated April 21, 1997, from Purna Ginjupalli, stating:

> As a president of Indian (IACA), I gave [a] letter of employment to [the beneficiary] based on what he presented orally to us at that time. Subsequently, I came to know he falsified all records and told many lies to get his permanent resident card. As soon as he got the resident card, based on his false presentation he quit his temporary job at IACA.

Another individual who was a member of IACA verified the information provided by Mr. Ginjupalli in a separate letter dated April 25, 1997. He stated:

> As he stated in his application, [the beneficiary] is not a qualified priest nor [is] he capable of performing any or Prayer. He unduly influenced some of the members of [the] on, and [got] a temporary job of office manager and priest at IACA. . . .
>
> Before he applied as a priest in the IACA, he and his family used to work at Dekalb . . during the year of 1993. He applied for this job with falsified documents. At the present time he is not working as priest at the IACA. He is working at . in Atlanta, Georgia. Also, he is working at

The record contains evidence that corroborates the statement that the beneficiary was working as an instructor for as of March 25, 2002. The record also contains an official document from the Georgia Department of Labor showing that the beneficiary worked for Randstad Temporary Force in 1997. According to this document, Ransdstad paid the beneficiary $4,611.55 in the third quarter of 1997 and $1,475.38 in the fourth quarter of 1997. The beneficiary worked for two secular employers during the qualifying period, and no evidence has been submitted to demonstrate that the beneficiary was a full-time, salaried religious worker throughout the two-year period immediately preceding the filing date of the petition.

In response to the Notice of Intent to Revoke, counsel stated that the Board of Directors of IACA doubts that the letter of complaint was actually written by Counsel further stated:

> It is also clear that this past president was not the employer of the priest as claimed but the board of directors of IACA. It is in evidence that the priest was assessed and offered

> employment (pending the approval of the Service) on behalf of the Board of Directors of IACA not by the late Evidence available shows that the offer of employment to the beneficiary was made prior to the late assumption of office as president in 1996. . . .
>
> The late was Vice President in 1995 when the beneficiary was offered employment. He was aware of this employment. He was aware of the verification of the background of the beneficiary. He did not find any objections. In 1996, he became president. He still was not able to find any objections. . . .
>
> The letter from the f Georgia, Inc., clearly shows that the beneficiary has been a priest in the Hindu community from late 1993 servicing the needs of the community. What the Service (now CIS) needs may be educated on is that once a priest, always a priest. A Hindu priest does not need to be attached or affiliated with a temple to be a priest. Servicing the religious needs of the community in their homes, at social and religious functions such as marriages, births, deaths, organizing religious discourse, counseling, and performing pujas, etc., are roles that a priest keeps performing even if he is not attached to a temple. . . . This is precisely what the beneficiary had been doing both before and after joining the IACA as the resident priest.

Counsel submitted a notarized affidavit from stating:

> [B]efore his appointment, I verified that [the beneficiary] had been a community priest performing religious ceremonies for community members in. . . Atlanta, Georgia, from October 1993 to November 1995.

Counsel also submitted a letter dated July 10, 2002, from the head priest of the beneficiary's temple in Gujarat, India. stated that the beneficiary worked as a full-time priest from November 1988 to August 1992.

In addition, counsel also submitted a letter dated July 15, 2002, from Chairman of the f Georgia, Inc. stated that he has personal knowledge that the beneficiary has been serving as a Hindu priest since late 1993 in Atlanta, Georgia.

Additionally, counsel submitted a letter signed by the Ani Agnihotri, the Chairman of IACA, he President of IACA, a board member of IACA, and a former President of IACA. These individuals state:

1. The then president made the initial employment offer in 1995.
2. Second, the late did not have the authority to act the way he supposedly did. If he discovered any inconsistencies in the previous work experience of the priest, it was his express duty as a past president to so inform the

then president and the Board of Directors of the Indian American Cultural Association (IACA).

Finally, counsel submitted the 2000 IACA membership directory listing the beneficiary as one of two temple priests and as a member of the congregation.

The petitioner specifically stated on the Form I-360 petition that the beneficiary worked for the Dekalb Farmers Market and for an Econolodge in Decatur, Georgia, during the period from 1993 to 1995. Although stated in his affidavit that the beneficiary had been a community priest from October 1993 to November 1995, no evidence has been submitted to corroborate this statement. 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). Mr. both stated in their letters that the beneficiary did not begin his employment as a Hindu priest for IACA until late 1995. In his response to the Notice of Intent to Revoke, counsel asserted that the beneficiary was working as a priest during the two-year qualifying period even though he was not affiliated with a specific temple. Counsel has not provided evidence to demonstrate that the beneficiary was working as a full-time, salaried Hindu priest throughout the requisite period. It was held in *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988) and *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980) that the assertions of counsel do not constitute evidence. Further, the evidence of record clearly shows that the beneficiary has worked at secular jobs on at least a part-time basis since 1993.

Counsel's assertion tha letter of April 21, 1997 is not genuine, is not supported by the evidence of record. signatures on the letter dated March 15, 1996 and the letter of April 21, 1997 appear identical. Furthermore, there is no contradiction between s statements in his letter of April 21, 1997 and his statements in his letter of March 15, 1996. stated in his letter dated March 15, 1996, that the beneficiary had been working as a priest for the temple. stated in his letter dated April 21, 1997, that he had provided an employment letter for the beneficiary, not that he had extended the job offer to the beneficiary. further stated that he had provided a letter of employment in good faith, but had later learned that the beneficiary falsified records in order to obtain lawful permanent resident status. 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). In this case, the petitioner has not provided sufficient evidence to establish that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing date of the petition. Therefore, the petitioner has not overcome the grounds for revocation of the approval of the petition.

Beyond the decision of the director, the petitioner has also failed to establish 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 demonstrated that the beneficiary would not be solely dependent on supplemental employment or solicitation of funds for support. The petitioner also has failed to establish that the beneficiary is qualified for a religious worker position within the religious organization as required at 8 C.F.R. § 204.5(m)(3)(ii)(D). Additionally, the petitioner has not established that it has had the ability to pay the beneficiary the proffered wage. The petitioner has not provided copies of its

financial reports, federal income tax returns, or audited financial statements as required at 8 C.F.R. § 204.5(g)(2). Furthermore, the petitioner has failed to establish that it is a bona fide non-profit religious organization as defined at 8 C.F.R. 204.5(m)(2). The petitioner has not provided a letter from the Internal Revenue Service recognizing it as exempt from taxation under section 501(c)(3) of the Internal Revenue Code as it relates to religious organizations. Therefore, the petition also must be denied for these reasons.

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.