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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VERMONT 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.

Cindy M. Jones for

Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The immigrant visa petition was denied by the Director of the Vermont Service Center and is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the appeal will be sustained.

The petitioner indicates that it is a that 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), in order to employ him as a Shaolin monk.

The director determined that the petitioner had not established that the position qualified as that of a religious worker. The director further determined 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. The director also determined that the petitioner had not established that the beneficiary was qualified for a religious worker position within the religious organization. Finally, the director determined that the petitioner had not established that it had extended a valid job offer to the beneficiary.

On appeal, counsel submits a brief and 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;
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> (ii) seeks to enter the United States--
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> (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
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> (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
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> (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
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> (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 non-profit 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 first issue raised by the director is whether the petitioner has established that the position qualifies as that of a religious worker. The director determined that the petitioner had not established that the position is traditionally a full-time, salaried position within the religious organization or that the position is a traditional religious function within the religious organization.

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 term "religious vocation: is defined at 8 C.F.R. § 294.5(m)(2) as follows:

> Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

The proffered position is that of a Shaolin monk. The petitioner describes the duties of the proffered position as follows:

> [The] [b]eneficiary will be given the title of Chief Instructor at the [redacted] & [redacted] run by the temple. In the [redacted] once you are a Shaolin monk, you are always a [redacted] It is a life-long commitment. His employment is full time and permanent. In the temple, [the beneficiary] will teach lay followers and members of the [redacted] and martial arts. He will instruct the students who sign up for the various classes and also assist the undersigned in the temple religious ceremonies such as the daily prayers and Buddhist rituals for the followers. He will do those duties six days a week. During week days, classes start at 4:30 pm and end at about 9:00 pm. On Saturday and Sunday, classes start at 8:00 am and end in the evening with the evening service. Sometimes he will also accompany the undersigned on home visits of temple members and conduct ceremonies when needs arise. Beneficiary will be provided room and board and small stipend and medical expenses. The total expense is about $15,000 to $20,000 per year.
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> On a regular basis, the beneficiary will teach [redacted] about 30 hours a week and will help conduct religious services for about 4 hours a week and assist in teaching of [redacted] about two hours a week. He will also conduct home

visits of temple members and gives martial art demonstrations on an irregular basis.

In a letter dated June 4, 2002, the president of the petitioning organization, explained the religious nature of the proffered position as follows:

> The teaches the harmony of body and mind by providing spiritual teachings with an equally strict regimen of physical cultivation and martial arts training that remain unparalleled in excellence to this day. A unique feature of this type of Buddhism is that it couples religious training with Chinese martial arts. Unlike Buddhist schools of thought that require a person to be still during meditation or the studying of scriptures, the practice strenuous physical exercises as a form of meditation. In the , this intense concentration is an important part of Buddhist spiritual training.
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> From its inception, the practice of Shaolin martial arts is inseparable from the Buddhist way of living and thinking. monks and followers is a form of manifestation of nd spiritual practice. The idea is that by following a strict martial arts discipline, the gap between the body and the mind is bridged. If the Buddhist teachings are adhered to, something magical happens, namely, the martial arts discipline is transformed into a vehicle for spiritual enlightenment.

In response to the director's request for additional evidence, described the tradition as follows:

> Legendary monks with a 1500-year history are unique among Buddhist monks because they are trained not only in the traditional they are also martial arts experts. They all enter the monastery at an early age for such training. In the past, such teachings were only taught internally within the monastery to other monks. In recent years, the monastery began to teach to layman members of the temple. But the teaching activities are still carried out exclusively by the monks themselves because it is almost impossible to find a laym[a]n who is well trained both in
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> Therefore, in addition to the teaching and studying of Buddhist scriptures, instruction in and meditation to our worshippers is a major part of our religious activities and is a traditional feature of

The record contains an interview with the October/November 1997 issue of *Kung Fu Magazine* in which he described the process of becoming a Shaolin monk at page 34 as follows:

> [On the] exterior, even authentic who are on the different levels of monkhood appear the same. Initially, monks enter a novice and probationary stage of monkhood in which they follow fewer Buddhist precepts than ordinary monks called Sha . to see if the young monks really want to live the life of a monk. This probationary period has no time limit. A novice monk who feels he is ready to take on more rules of prohibitions need only go to his sifu to learn more Buddhist rules. At the minimum age of twenty, if the novice monk is deemed ready, he is then allowed to take the full vows of a fully ordained monks. . .

The evidence of record supports a finding that the proffered position of Shaolin monk is a religious vocation rather than a religious occupation. The record contains ample evidence demonstrating that the practice of martial arts is considered by to be a form of moving meditation and an integral part of the practice of this particular branch of . Further, instructing students in and martial arts in the Shaolin tradition is a traditional religious function for Shaolin monks. The position is full time, at least 40 hours per week. Since the position is a religious vocation, the beneficiary lives at the temple and is fully supported by the temple. There is no requirement in the statute or the regulation that a monk in a religious vocation must be a salaried employee of the religious organization. In view of the foregoing, it is concluded that the petitioner has submitted sufficient evidence to demonstrate that the proffered position is a qualifying religious vocation, and this reason for denial of the petition has been overcome.

The second issue raised by the director is whether the petitioner has established that the beneficiary had been engaged continuously in a qualifying religious vocation for two full years immediately preceding the filing date of the petition. The director determined that the petitioner had not established that the beneficiary was performing the duties of a religious vocation or occupation throughout the two-year qualifying period.

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.

Pursuant to 8 C.F.R. § 204.5(m)(3)(ii)(A), each special immigrant religious worker petition must be accompanied by a letter from an authorized official of the religious organization in the United States stating 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.

The petition was filed on June 17, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a religious vocation from June 17, 2000 to June 17, 2002.

The petitioner indicates on the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, that the beneficiary entered the United States on September 29, 2000. The petitioner states that the beneficiary is currently out of status and has not worked in the United States without authorization.

The record contains a letter dated June 4, 2002, from the Abbot of the the People's Republic of China, in which he stated:

> [The beneficiary] was admitted to our temple at the age of seven and has been studying Ch'an Buddhism and learning Shaolin martial arts for the last fourteen years. He is a 35th Generation Shaolin monk and has had a full training as a monk. He is one of our best trained Shaolin monks and has been participating in and conducting a wide range of religious activities for the temple, including demonstrating and teaching Shaolin martial arts inside and outside of our temple for the last four years. Due to his training and experience, he was selected as a member of the Shaolin monks delegation to visit Hong Kong, Los Angeles, Boston and New York to spread Shaolin Ch'an and demonstrate . During his time in New York, he has assisted Master Shi Guolin to conduct activities such as studying and teaching Buddhist scriptures, meditation and other Shaolin Buddhist activities as well as teaching Shaolin martial arts with the financial support of the temple in China.

In a letter dated January 26, 2003, [redacted] stated that the beneficiary has been working in the Shaolin Temple in Flushing, New York, since his arrival in the United States on September 29, 2000. He further stated:

> Right now, he gets his stipends from the headquarter[s] in China. He is a monk of the Temple. There is no such thing as an employment contract between the Temple and its monks. All monks live and eat in the Temple and do not get pay.

The petitioner has provided sufficient evidence to demonstrate that the beneficiary was engaged continuously in the religious vocation throughout the two-year period immediately preceding the filing date of the petition, and this basis for the denial of the petition also has been overcome.

The third issue raised by the director is whether the beneficiary is qualified for a religious vocation within the religious organization.

Pursuant to 8 C.F.R. § 204.5(m)(3)(ii)(D), if an alien is to work in a religious vocation, the petitioner must submit evidence that the beneficiary is qualified in the religious vocation. Evidence of such qualification may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother.

The Abbot of the [redacted]e in China stated in his letter of June 4, 2002, that the beneficiary is fully qualified as a Shaolin monk and is, in fact, one of the best trained Shaolin monks in his temple. The petitioner has submitted photographs of the beneficiary performing demonstrations of Shaolin martial arts as a representative of the [redacted] in China and of the Temple in the United States. It is concluded that the petitioner has submitted sufficient evidence to demonstrate that the beneficiary is qualified as a religious worker in a religious vocation, and this reason for denial of the petition also has been overcome.

The final issue to be addressed in this proceeding is whether the petitioner has established that it has extended a valid job offer to the beneficiary.

Pursuant to 8 C.F.R. § 204.5(m)(4):

> The letter from the authorized official of the religious organization in the United States must also state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration). . . .

The director stated that the petitioner had failed to submit any evidence to demonstrate that the beneficiary would be employed in the conventional sense of full-time employment, or that the petitioner had ever relied on salaried full-time employees rather than volunteers from among the members of the organization to perform the duties of the proffered position. The director, therefore, determined that the petitioner had not established that it had extended a valid job offer to the beneficiary.

The petitioner provided a letter from an authorized official of the temple stating that the beneficiary is a Shaolin Buddhist monk who is engaged in a religious vocation, and is fully supported by the temple. The record contains the petitioner's 2001 Internal Revenue Service (IRS) Form 990, Return of Organization Exempt from Income Tax, showing an annual revenue of $153,878; its balance sheet for the year ending May 31, 2001, reflecting a fund balance of $526,678; a letter dated February 18, 2003, from HSBC bank in Flushing, New York, showing a checking account balance of $26,577.80 as of that date; and, a letter dated February 19, 2002, from Chinatown Bank in Flushing, New York, showing a savings account balance of

$29,321.82 as of that date. The petitioner has provided sufficient evidence to demonstrate that it has extended a valid job offer to the beneficiary in that it has demonstrated that it has the ability to maintain the beneficiary's support. Therefore, this ground for denial of the petition also has been overcome, and the petition may be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained. The petition is approved.