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

C-1

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

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: SELF-REPRESENTED

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 Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner indicates that it is a Sikh 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), in order to employ him as a Sikh priest (granthi). The director determined 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.

On appeal, the petitioner submits a statement and additional evidence.

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 amember of a religious denomination having a bona fide non-profit, 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 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 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 April 15, 2002. Therefore, the petitioner must establish that the beneficiary had been continuously performing the duties of a religious vocation or occupation during the period from April 15, 2000 to April 15, 2002.

The record shows that the beneficiary was first admitted to the United States on May 22, 2000, as a nonimmigrant B-2 visitor. He subsequently re-entered the United States on March 1, 2002 as a nonimmigrant B-2 visitor with stay authorized to August 28, 2002. The petitioner indicated on the Form I-360, Petition for Amerasian, Widow or Special Immigrant, that the beneficiary had not worked in the United States without authorization.

The petitioner submitted a letter dated September 15, 2002, from an official of in New Delhi, India, stating that the beneficiary served the temple as a "granthi" from December 1988 to February 2000 for a salary of Rs1500 per month, along with donations from members of the congregation for performing religious services and individual prayers at their request. The official further stated:

> We are pleased when he informed us of his desire to proceed to foreign countries on missionary duties. During his visit back to India in between foreign visits he has been performing the same services at this

The legislative history of the religious worker provision of the Immigration Act of 1990 reflects that a substantial amount of case law has developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision. *See* H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he or she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

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. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he or she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963.

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 full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he or she is engaged in other secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation, who, in accordance with their vocation, live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and salaried. To find otherwise would be outside the intent of Congress.

According to the employment letter submitted with the petition, the beneficiary served a Sikh temple in India as a priest from December of 1998 to February of 2000. This employment does not constitute work experience in a qualifying religious vocation or occupation because it did not take place during the two-year qualifying period. On appeal, the petitioner claims that the beneficiary actually served the same temple in India as a Sikh priest from December 1988 to February of 2002. The petitioner submits a new letter from an official of the temple stating that the dates of the beneficiary's employment dates in the original letter should have been December 1998 to February 2002 instead of February of 2000. The petitioner has not provided any explanation for the change in the claimed dates of the beneficiary's employment. Doubt cast on any aspect of the petitioner's evidence 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).

Although the temple official states that the beneficiary traveled outside of India during the requisite period on "missionary duties," he does not indicate that the beneficiary was a salaried employee of the temple in India during that period. The record contains photocopies of several pages from the beneficiary's Indian passport showing that he was in India, the United Kingdom, the United States, Malaysia, and United Arab Emirates during the period from February 2000 to February 2002, but the passport pages contain no indication as to the purpose of the beneficiary's travel outside of India during the period. The record also contains the beneficiary's Indian income tax forms for the years 1999, 2000, and 2001, but these documents are not sufficient to establish that the beneficiary was a full-time, salaried religious worker during the requisite period. The beneficiary's employer in those years is not identified on the tax forms, and they do not indicate whether the beneficiary's employment was part-time or full-time. In view of the foregoing, it is concluded that the petitioner has not provided sufficient, credible 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, and the petition must be denied.

Beyond the decision of the director, the petitioner has also failed to establish that it has 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).

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 provided specific information as to how the beneficiary would be remunerated, nor has the petitioner shown that the beneficiary would not be solely dependent on supplemental employment or solicitation of funds for support.

Finally, the petitioner has not established 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). The record contains a "certificate" issued by Principal of n New Delhi, India, indicating that the beneficiary had received training in "gurbani kirtan, katha, and tabla," but no evidence has been submitted describing the training in detail or demonstrating that this training qualified the beneficiary as a religious worker. As the petition will be dismissed on the ground discussed, these issues will not be addressed further.

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.