U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

C1

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: NOV 01 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.

Marie Johnson
for Robert P. Wiemann, Director
Administrative Appeals Office

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Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

The self-petitioner seeks classification 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 failed to establish that the organization with which he was associated qualified as a bona fide nonprofit religious organization.

On appeal, counsel submits a brief and copies of previously submitted 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).

The regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

> (3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:
>
> (i) 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 § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

Documentation submitted with the petition indicated that the petitioner's proposed employment is as a minister of religion with the Brahma Kumaris World Spiritual University sub center in Austin, Texas. Documentation submitted in response to the director's Notice of Intent to Deny (NOID) dated July 11, 2002, indicated that the petitioner seeks to be employed as a minister of religion with the Brahma Kumaris World Spiritual Organization (BKWSO), and will work at the organization's subunit in Austin, Texas. The petitioner submitted no evidence to establish the relationship between the Brahma Kumaris World Spiritual University and the BKWSO.

To meet 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. In the alternative, to meet 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 Internal Revenue Code (IRC) of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, if applicable, and a copy of the organizing instrument of the organization which contains a proper dissolution clause and which specifies the purposes of the organization.

With the petition, the petitioner submitted a copy of a 1980 letter from the IRS granting the Brahma Kumaris Raja Yoga Centre, with a mailing address in San Antonio, Texas, tax exempt status under section 501(c) of the IRC as an organization described in section 170(b)(1)(A)(vi) of the IRC. A 1988 letter from the IRS acknowledges the Brahma Kumaris Raja Yoga Centre change of name to the BKWSO with a mailing address in Los Angeles, California. The petitioner submitted no evidence that the exemption granted to the BKWSO is a group exemption applicable to its subordinate units.

The petitioner fails to establish that the organization is exempt from taxation as a religious organization as required by the regulation. The petitioner submitted a copy of the BKWSO bylaws dated 1984 and a copy of the Certificate of Restated Articles of Incorporation issued by the Texas Secretary of State. While the bylaws state the purpose of the organization, they do not contain the dissolution clause required by the IRS for section 501(c)(3) status. As noted above, the petitioner submitted no evidence to establish that the Brahma Kumaris World Spiritual University is a subunit of BKWSO, or that the Brahma Kumaris World Spiritual University or any Austin subunit is covered under a group tax exemption granted to the BKWSO.

Further, counsel asserts on appeal, as she did in response to the NOID, that the BKWSO chose to be classified by the IRS under section 170(b)(1)(A)(vi) of the IRC for philosophical reasons. Counsel asserts that the BKWSO meets the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B); however, counsel failed to submit the documentation required by the regulation. Counsel did not submit a copy of a completed IRS Form 1023 or a copy of the organization's bylaws or articles of incorporation containing a proper dissolution clause.

The evidence is insufficient to establish that the petitioner's prospective employer is a bona fide nonprofit religious organization, exempt from taxation as required by the statute and regulation.

Beyond the decision of the director, the evidence does not establish that the petitioner has been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition. This deficiency constitutes an additional ground for dismissal of the appeal.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. 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 regulation 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."

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

> (ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:
>
> > (A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on January 15, 2002. Therefore, the petitioner must establish that he was continuously working as a minister throughout the two-year period immediately preceding that date.

According to [redacted] the petitioner initially entered the United States as a student to pursue his master's degree, and that after graduation, he reentered on the basis of an approved H-1B petition for a nonimmigrant worker in a specialty occupation [redacted] also stated that it is not uncommon for their priests/priestesses to work. In her letter accompanying the response to the NOID, counsel stated that the petitioner had been "carrying on a religious vocation and professional work." The petitioner submitted a copy of his visa, indicating that he entered the United States on August 11, 1998 as an F-1 nonimmigrant student. The petitioner also submitted a copy of a notification approving his change of status to an H-1 B nonimmigrant to work for the Vingnette Corporation from July 1, 2001 to December 31, 2003. Copies of "Annual Service Reports" for the years 2000 and 2001 lists the petitioner's education/profession as Master of Science and petroleum engineer.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." 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/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).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/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).

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).

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. To hold otherwise would be contrary to the intent of Congress.

[redacted] states that the petitioner has been associated with the BKWSO as a surrendered priest since 1998. However, the evidence reflects that the petitioner was a student and then worked in a secular job during the two years preceding the filing of the visa petition. The evidence does not establish that the petitioner was working continuously as a minister for two full years prior to the filing of the visa petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.