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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: NOV 1 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.

Mari Johnson

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

The petitioner is a "yogic religious educational retreat facility." It seeks 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 director of Kripalu Yoga teacher training. The director determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization. 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 of the petition, that the position qualifies as that of a religious worker or that the beneficiary is qualified for the position within the petitioning organization.

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

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.

According to the petitioner's letter of March 8, 2002, it is operated by the Foundation. The petitioner submitted a letter from the Internal Revenue Service (IRS) addressed to the Society of Pennsylvania indicating that the organization was granted tax-exempt status under section 501(c)(3) of the IRC as an organization described in section 509(a)(2) of the IRC.[1] The exemption does not specify that the tax exemption is based on the organization's status as a religious organization nor does it state that the tax exemption applied to any subordinate units operated by the organization. A copy of the articles of incorporation for the Yoga Society of Pennsylvania indicates that the name of the corporation is Fellowship. The petitioner submitted no evidence of the relationship between th Foundation and the Fellowship.

On appeal, counsel states that the Fellowship moved to Lenox, Massachusetts in 1991. However, no evidence in the record supports counsel's assertions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record contains a Return of Property Held for Charitable and other Purposes filed with the Massachusetts Department of Revenue. However, this only establishes that the petitioner held property in Stockbridge, Massachusetts in 1984.

The petitioner must either provide verification of individual exemption from the IRS, proof of coverage under a group exemption granted by the IRS to the denomination, or such documentation as is required by the IRS to establish eligibility as a tax-exempt nonprofit religious organization. Such documentation to establish eligibility for exemption under section 501(c)(3) includes: a completed Form 1023, a completed Schedule A attachment, if applicable, and a copy of the articles of organization showing, *inter alia*, the disposition of assets in the event of dissolution.

The evidence is insufficient to establish that the petitioner is a bona fide nonprofit religious organization, exempt from taxes as required by the statue and regulation.

On appeal, counsel asserts that CIS has approved previous visa preference petitions for religious workers by the petitioner. The director's decision does not indicate whether he reviewed the prior approvals of the other immigrant petitions. If the previous immigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that

[1] The year of the letter is not completely legible. However, counsel indicates the date of the letter is December 3, 1981.

CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved previous immigrant petitions filed by the petitioner, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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 March 15, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working in the religious occupation throughout the two-year period immediately preceding that date.

The petitioner submitted a letter from [redacted] director of its teacher development, in which she states that as of February 2000, the beneficiary had completed the training necessary to become director of yoga teacher training and was officially hired into that position. We note that on February 21, 2000, the petitioner filed an employment-based immigrant petition on behalf of the beneficiary's ex-wife for the same position that it now asserts that the beneficiary has held since February 2000. The petitioner also stated that no one else had held this position since it was created; however, in response to the director's request for evidence (RFE) dated December 22, 2002, counsel stated that the position was held by the beneficiary's ex-wife until the petitioner withdrew its sponsorship and she left the organization.[2] The petitioner submitted no evidence to explain this apparent inconsistency in the record. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such

[2] The record does not establish when the petitioner withdrew its petition on behalf of the beneficiary's ex-wife.

inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In letters dated March 7, 2003, director of human resources for the petitioner, stated that the beneficiary was a "vowed member of the Foundation] religious order. At [the] time he left the order, [the beneficiary] was in the position of teacher training (KYTT) Assistant Director and was given the status of employee." Although Ms. stated that a letter documenting the beneficiary's change from "vowed order to paid staff" was attached, no documentation of this appears in the record. The record contains a certificate dated December 31, 2001 certifying that the beneficiary had completed the teacher training for basic certification.

The record reflects that the beneficiary served in some capacity with the petitioner during the two years immediately preceding the filing of the visa petition, and was paid for his services. The record is unclear, however, as to when the beneficiary began his full time employment with the petitioner as its director of teacher training. A February 28, 2003 letter from evening programs director, describes the beneficiary as one of her "evening Programs presenters." yoga teacher coordinator, states that he has been the beneficiary's direct supervisor since 1998, and that the beneficiary has served as a senior yoga teacher and director of yoga teacher training. faculty dean and director of curriculum, states that the beneficiary began "directing programs to train teachers" in 1999.

We find that the evidence is sufficient to overcome the director's determination that the petitioner had failed to establish that the beneficiary is qualified for the position within the organization. However, the evidence does not establish that the beneficiary has been continuously employed as director of yoga teacher training for two full years prior to the filing of the visa petition.

The director determined that the petitioner had not established that the position qualified as that of a religious occupation. According to 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work in a religious occupation.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. 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" and instead provides a brief list of examples. 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. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Citizenship and Immigration Services (CIS) therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed 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.

The petitioner identifies itself as a religious denomination and does not indicate that it reports to any particular governing authority. The petitioner submitted a position description for the proffered job which lists the educational, skills and experience requirements. The petitioner also states that the proffered salary for the position in 2002 was $38,993, and submits a Form W-2, Wage and Tax Statement, indicating that it paid the beneficiary that amount. Although the petitioner stated that the position was created in 1999, we find the evidence sufficiently establishes that the position is related to the petitioner's creed and is a religious occupation within the meaning of the statute and regulation.

However, as the petitioner has not established that it qualifies as a bona fide nonprofit religious organization that is exempt from taxation or that the beneficiary was employed continuously for two full years as a director of Kripalu Yoga teacher training, the appeal cannot be sustained.

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.