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U.S. Citizenship and Immigration Services

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FEB 01 2015

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:
WAC 97 192 50646

IN RE: Petitioner:
Beneficiary [redacted]

PETITION: Immigrant 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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The director certified the decision to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed.

The petitioner is a Buddhist monastery. 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 a religious meditation teacher and author. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous membership in the religious denomination, or continuous work experience as a religious meditation teacher and author, immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that the beneficiary possesses the necessary qualifications for the position offered.

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 582.

The director issued the certified notice of revocation on September 24, 2004, and allowed the petitioner thirty days to submit a brief in response. To date, over three months later, the record contains no further statement from the petitioner or counsel, and therefore we consider the record of proceeding to be complete as it now stands.

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).

Regulations at 8 C.F.R. § 204.5(m)(3)(ii) require the petitioner to establish:

(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; and

(B) That, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested; or

(C) That, if the alien is a religious professional, he or she has at least a United States baccalaureate or its foreign equivalent required for entry into the religious profession. In all professional cases, an official academic record showing that the alien has the required degree must be submitted; or

(D) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother, or that the type of work to be done relates to a traditional religious function.

All of the stated grounds for revocation pertain, in different ways, to the above requirements. Also relevant to the various grounds for revocation is information in the record indicating that the beneficiary had once been a Buddhist monk, entitled to use the title "Phra" and a religious name and to wear the saffron robes of a monk. On March 28, 1995, the Supreme Patriarch and President of the Universal Ecclesiastical Order issued an "Annulment of Monkhood," indicating that the beneficiary was no longer "permitted to maintain his monkhood," for reasons that lie outside the scope of this decision. The petitioner has contested the motives underlying this annulment, and argued that it has no effect because he refused the command to "denounce his monkhood," but it is clear that the Sangha Supreme Council and the Supreme Patriarch no longer consider the beneficiary to be a monk. In more recent correspondence, the petitioner has acknowledged the beneficiary's "expulsion from the Buddhist monkhood."

We shall first address, briefly, the denominational membership requirement 8 C.F.R. § 204.5(m)(3)(ii)(A). The director stated "[a]lthough the beneficiary continues to exercise his religious beliefs as a Buddhist, his membership in the denomination severed following his expulsion from the Buddhist monkhood on March 28, 1995." We do not find that the beneficiary ceased to be a Buddhist when he ceased to be a monk, or that the denomination expelled him entirely from the faith. It appears that the director may have conceded this point, saying "the beneficiary's membership may well be mitigated" before turning to the issue of the beneficiary's work experience, but the wording of the notice is unclear on this point. In any event, we find no evidence that the beneficiary's religious denominational affiliation changed during the two-year qualifying period. Even if his March 1995 expulsion somehow changed his denominational membership, that event does not reflect any change in his affiliation during the July 1995-July 1997 qualifying period. For these reasons, we hereby withdraw the director's finding regarding the beneficiary's denominational membership. There is no evidence of any change in the beneficiary's membership during the relevant period.

The next question is whether the beneficiary is, and has been, qualified to perform the duties of his position, as required by 8 C.F.R. §§ 204.5(m)(3)(ii)(B) through (D). In order to ascertain whether the beneficiary is qualified to perform his intended duties, we must first determine what those duties are and whether those duties are those of a minister, a religious vocation, or a religious occupation. 8 C.F.R. § 204.5(m)(2) defines those terms as follows:

> *Minister* means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.
>
> *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.
>
> *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.

In a letter dated October 3, 1997, Venerable Pornthep Suthevo, president of the petitioning entity, states:

> At this time, we require the continuing services of [the beneficiary] . . . to continue his religious work as a meditation teacher and author. . . .
>
> [The beneficiary] has been a member of this religious organization continuously from 1985 to the present. . . .
>
> Prior to coming to the United States, he taught meditation and continued his writing at the Sunnataram Forest Monastery Leejeer, Sangkhlaraburi, Kanchanaburi, Thailand.

> [The beneficiary] has continued his religious commitment to our Monastery in California continuously from his arrival in July 1995 to the present. He is totally committed to his religious activities including meditation practice, meditation instruction and writings on meditation, spending more than 40 hours per week performing these duties. . . .
>
> The Monastery provides [the beneficiary] with room and board, medical costs and all other necessities of life and travel expenses, estimated at the value of $10,000 per year.

The above letter does not describe the beneficiary as a minister. The letter describes unpaid work in a monastery, which would generally appear to be consistent with the religious vocation of a monk. Nevertheless, because status as a monk is conveyed by a religious authority, rather than simply assumed by an individual, an individual cannot be a monk without denominational recognition. If the religious authorities declare that the beneficiary is no longer a monk, then the beneficiary is no longer a monk, regardless of what he considers himself to be, and regardless of his opinion of the grounds for his expulsion. Similarly, the regulations at 8 C.F.R. §§ 204.5(m)(2) and (3)(ii)(B) refer to ministers in the sense of being *authorized* clergy, which obviously requires authorization by some competent religious authority. Once that authority has rescinded its authorization (as is clearly the case here), the individual is no longer authorized clergy.

Despite being defrocked in early 1995, the beneficiary has continued to sign his religious name with the monastic title "Phra" on legal documents. As recently as March 11, 2003, counsel wrote that the beneficiary "is a Buddhist monk, and he has the religious title 'Phra.'" Based on this continued use of a monastic title, the director determined that "[t]he services of the beneficiary are prospectively intended as a Buddhist monk."

On August 21, 1995, less than two years before the filing date of the current petition, the petitioner had filed a previous special immigrant religious worker petition on the beneficiary's behalf. In sworn affidavits accompanying that petition, Venerable Prasert Phiujee, abbot of the petitioning monastery, repeatedly referred to the beneficiary as a "minister," "ordained monk" and "Buddhist monk"; called him by his religious name; and used the monastic title "Phra." The petitioner ceased to refer to the beneficiary as a "monk" only after being advised that immigration authorities were aware of the beneficiary's March 1995 expulsion.

The beneficiary has written and signed his religious name with the title "Phra" on numerous documents after March 1995, including immigration documents with perjury warnings. On Form G-325A, Biographic Information, executed circa September 1995, the beneficiary indicated under penalty of perjury that he had been a "Buddhist minister" from July 1974 to the "present time," i.e., the date he executed the form.

The 1995 petition included a document which reads, in part:

> **DUTIES OF THERAVADA BUDDHIST MINISTERS**
>
> As a Theravada Buddhist minister/monk, you have been granted faculties including but not limited to the following responsibilities:
>
> **PREACHING:** To preach the message of Lord Buddha as reflected in the Pitaka or Buddhist Scriptures. . . .
>
> **BAPTISM:** You are hereby authorized to conduct proper chanting and blessings upon infants or anyone at their request and according to ancient Buddhist custom.

CONFIRMATION: It is your duty to preside over the ceremony of Buddhamamaka and accept the oath of devotees between ages 15-20 who accept the teachings of Lord Buddha and follow the first five precepts of Buddhism.

ANNUAL RELIGIOUS HOLIDAYS AND FUNCTIONS: Of major importance is your obligation to coordinate and supervise arrangements for our traditional ceremonies. . . .

MARRIAGE: It is the duty of the minister to confer blessings and chanting upon the couple to be married. . . .

PENANCE: You are authorized to hear confessions of devotees and to grant absolution when applicable according to ancient Buddhist custom. . . .

BURIAL SERVICES: You are authorized to conduct ceremonies for the deceased and family and friends of the deceased, according to Buddhist tradition. . . .

The duties described above appear to be consistent with duties typically reserved for authorized clergy, rather than for lay workers employed by a religious denomination. The beneficiary's name does not appear on the document, but the petitioner's submission of this detailed job description implies the petitioner's belief that the document is relevant to the petition.

The director concluded, on the basis of the above materials, that the petitioner intends to employ the beneficiary as a minister and/or monk. The revocation of the approval of the petition rests, in part, on the fact that the beneficiary's ordination has been revoked, and therefore the beneficiary is not qualified to work as a minister or monk.

While the petitioner's 1995 submissions are not entirely irrelevant, they do not necessarily reflect the position in which the petitioner intended to employ the beneficiary in 1997. The petitioner's representation of the beneficiary as a minister and/or monk derives from a separate proceeding, which, at present, is administratively closed. Counsel's 2003 reference to the beneficiary as a monk, in the present tense, while troubling, is not persuasive evidence of an ongoing effort by the petitioner to portray the beneficiary, falsely, as a monk. Similarly, the beneficiary is not a party to this petition (see 8 C.F.R. § 103.3(a)(1)(iii)), and his continued use of his religious name with the title "Phra" is not presumptive evidence that the petitioner continues to regard the beneficiary as a monk. It does not rule it out, either, but such speculation is not a reasonable foundation for revocation of approval of an immigrant petition.

The available evidence indicates that, while not a monk, the beneficiary is a religious instructor and the position offered to him thus qualifies as a religious occupation.

The final ground we shall discuss is also the strongest of the director's cited grounds for revocation. The regulation at 8 C.F.R. § 204.5(m)(1) 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." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on July 9, 1997. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a religious meditation teacher and author throughout the two years immediately prior to that date.

As described above, the petitioner has filed two special immigrant religious worker petitions on the beneficiary's behalf. The first of these petitions was filed less than two years before the second one. Thus, the petitioner's description of the beneficiary's duties submitted with the first petition amounts to a contemporaneous representation of those duties close to the beginning of the 1995-1997 qualifying period. As we have already noted, materials submitted with that first petition in August 1995 refer to the beneficiary as a "monk," and at that time, an official of the petitioning monastery urged quick approval of the petition because of the petitioner's "urgent need for his services as a minister" to handle upcoming holiday ceremonies.

We cannot conclude that, since July 1995 or earlier, the petitioner has consistently considered the beneficiary to be a lay religious instructor. Rather, in August 1995, the petitioner called the beneficiary a "monk" and a "minister," and submitted a slate of duties that included far more than religious instruction. As late as September 1996, in response to a notice of intent to revoke approval of the first petition, the petitioner contested the director's assertion that the beneficiary was no longer a monk. In short, the materials prepared during the actual qualifying period, as opposed to claims advanced after the fact, emphasize the beneficiary's status as a monk and minister rather than his tasks as a religious instructor. The record contains no actual first-hand documentary evidence (as opposed to descriptions) of the beneficiary's activities at the time. In light of the materials available in the record, the petitioner's more recent assertion that the beneficiary has consistently performed the duties of an instructor (going so far as to describe the beneficiary as an instructor as early as 1994, when he still had a monk's title and credentials) is unsupported and lacking in credibility.

More likely, the petitioning monastery (apparently co-founded by the beneficiary himself, whose signature appears in its bylaws) originally intended to employ the beneficiary as a monk and minister, with the full range of duties thereof, and only later scaled back those duties to those of an instructor after it became apparent that immigration authorities would not recognize the beneficiary's status as a monk or minister. Otherwise, we would have to conclude that the petitioner has simply tailored its description of the beneficiary's duties and title to what it believes will be most conducive to approval of the petition. Either way, the petitioner's description of the beneficiary's title and duties in August 1995 does not match the information provided in July 1997, and therefore we cannot conclude that the beneficiary has consistently performed the same duties throughout the qualifying period.

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.

ORDER: The revocation is affirmed.