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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

PUBLIC COPY

[redacted]

JAN 21 2005

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:
WAC 03 242 54290

IN RE: Petitioner: [redacted]
Beneficiary

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:

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner 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), to be employed as a Buddhist nun. The director denied the petition, determining that the petitioner failed to establish that the beneficiary had the requisite two years experience in the position prior to the filing of the petition. The director further found that the petitioner failed to demonstrate its tax-exempt status.

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--
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> > (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 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).

The regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file an 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)(4) states that each petition for a religious worker must be accompanied by a job offer from an authorized official of the religious organization at which the alien will be employed in the United States. The official must describe the terms of payment for services or other remuneration.

The regulation at 8 C.F.R. § 204.5(m)(2) states, in pertinent part:

> *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.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that "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 August 25, 2003. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious duties throughout the two years immediately prior to that date, and that the beneficiary seeks to enter the United States in order to perform those same duties.

The Form I-94, Arrival and Departure Record, contained in the record indicates that the beneficiary entered the United States as an R-1 nonimmigrant on March 31, 2002, with authorization to remain in the United States until March 20, 2005.

The regulation at 8 C.F.R. § 204.5(m) defines a "religious vocation" as "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" (emphasis added).

In a letter dated August 14, 2003, the petitioner states that in 1992 the beneficiary "took refuge" under the guidance of the founder of the [redacted]ssociation and from that time has "continued her affiliation with this Association." The petitioner further states:

> On November 4, 1998, [the beneficiary] had her head shaved to become a nun. In August 2002, she has taken 348 vows, of which include the vow of celibacy, the vow of honesty, the vow of poverty, and the vow of simplicity in dress and accommodations, as a fully ordained Buddhist nun at the City of Ten Thousand Buddhas (CTTB). She was bestowed with a religious name . . .Thus, she has been a member of DRBA for over two years.
>
> From 1996 to 2000, [the beneficiary] enrolled in our Sangha & Laity Training Program at CTTB . . .
>
> * * *
>
> In July 2000, after completing her study in SLTP, our Association sponsored [the beneficiary] as a religious worker and she has been serving as a Buddhist nun since then. Two months later, on September 2000 [the beneficiary] was assigned to perform as a religious missionary at our oversea affiliated branch . . .

> In September 2002 [the beneficiary] returned to the City of Ten Thousand Buddha to receive intensive training for a period of 108 days. Upon completing the ordination requirements, [the beneficiary] is formally qualified to serve in many capacities with the Buddhist tradition as an Ordained Minister.
>
> * * *
>
> We are aware of [the beneficiary's] potential and extraordinary talents and thus, this Association now wishes to sponsor [the beneficiary] as our permanent religious worker in the United States. This way she may continue as a resident nun at the City of Ten Thousand Buddha to continue to carry on her religious vocation . . .

The record also contains a copy of the beneficiary's Precept Ordination Certificate. The certificate states that the beneficiary's 108-day ordination period began on April 18, 2002, and was completed on August 7, 2002. The certificate further states:

> [The beneficiary] participated in the Ordination Training Program and attended ordination ceremonies at the Sagely City of Ten Thousand Buddhas and received the transmission of the [redacted] recepts. After examination and approval, [the beneficiary] has been granted full and honorable status as a Bhiksuni, whereby this Precept Ordination Certificate is awarded by the [sic] Precept Transmitting and Certifying Acharyas.

Based upon the information contained in the certificate, it appears that the beneficiary did not complete her training as a nun until August 7, 2002. Though the beneficiary is now considered to be a fully-ordained Buddhist nun, at the time of filing the beneficiary had not been a fully-ordained Buddhist nun for the prescribed 2-year period. A visa petition may not be approved based on speculation of future eligibility or after the petitioner becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

Pursuant to the plain wording of the statute and regulations, if the beneficiary seeks to enter the United States to work as a fully ordained nun, then she must have at least two years of experience *as a fully ordained nun* immediately prior to the petition's filing date. Experience in lesser positions, coupled with the intention of becoming a fully ordained nun, cannot suffice. To hold otherwise would clearly be against the intent of Congress. The fact that the petitioner requires some religious duties of its "student nuns" is not sufficient to show that a "student nun" is, itself, a vocation or occupation. In a 1980 decision, 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).

While the determination of an individual's status or duties within a religious organization is not under the purview of Citizenship and Immigration Services (CIS), the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

The remaining issue is whether the petitioner has established that it is a tax-exempt organization. The regulation at 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

> (A) Documentation showing that it is exempt from taxation in accordance with section 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 section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The record contains a letter from the Internal Revenue Service (IRS) to the Sino-American Buddhist Association, Inc., dated March 16, 1972. In this letter, the IRS states its determination that the Sino-American Buddhist Association, Inc. is exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

The record contains a second letter from the IRS to the petitioner, dated April 24, 1984. In this letter, the IRS acknowledges receipt of the petitioner's name change from Sino-American Buddhist Association, Inc. to Dharma Realm Buddhist Association, Inc. The letter refers to the petitioner's original exemption date of March 16, 1972, and states "[t]he changes indicated do not adversely affect your exempt status and the exemption letter issued to you continues in effect."

In determining the petitioner had failed to demonstrate its tax-exempt status, the director noted that the address listed by the IRS for the petitioner at 1731 15th Street, San Francisco, California, 94103, did not match the address listed by the petitioner on the Form I-360.

The director's decision, however, did not address the evidence submitted by the petitioner in response to the director's request for evidence, which lists the Gold Mountain Monastery at 800 Sacramento Street, San Francisco (the address listed on the Form I-360), as part of the Dharma Realm Buddhist Association.

On appeal, the petitioner states:

> The Internal Revenue Service has granted tax-exempt status to the Sino-American Buddhist Association, which was consolidated to DRBA in 1984.
>
> Our proof of tax-exempt status indicates that the Sino-American Buddhist Association, Inc. is located at 1[redacted], San Francisco, CA. Please note that this is an old address. Since 1984, we have been operating as DRBA, with the official (headquarters) address a[redacted]California [sic]. The address 800 Sacramento Street, San Francisco, CA is a correspondence address and an affiliate of this Association. Our Gold Mountain Monastery on 800 Sacramento Street is one of the locations of our non-profit corporation.

We concur with the petitioner's statements and find that the letters from the Internal Revenue Service, included in the petitioner's original filing, are prima facie evidence that the petitioner is a bona fide, nonprofit, religious organization. We, therefore, withdraw the director's finding that the petitioner does not qualify as a nonprofit organization

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.