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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]

JAN 21 2005

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:
WAC 03 138 53564

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:

[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

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 "Religious Instructor, Dormitory Superintendent and Religious Transcriber." The director denied the petition, determining that the petitioner had failed to establish that the beneficiary had the requisite two years experience in a religious occupation prior to the filing of the petition. The director further found that the petitioner failed to establish its tax-exempt status as a religious organization.

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;
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> (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 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)(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."

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 first issue to be examined is whether the petitioner has demonstrated that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for at least the two years preceding the filing of the petition. Connected with this issue is the question of whether the beneficiary's work for the petitioner constitutes qualifying employment in a religious occupation or vocation.

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, fundraisers, 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.

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 March 31, 2003. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation from at least March 31, 2001.

The Form I-94, Arrival and Departure Record, indicates that the beneficiary initially entered the United States on November 19, 1995, as a B-2 nonimmigrant with authorization to remain in the United States until May 18, 1996. The record further reflects that the beneficiary received approval to extend her stay as a B-1 nonimmigrant until November 18, 1996. The beneficiary subsequently received approval to change her nonimmigrant status to that of an M-1 nonimmigrant and was granted additional extensions of approval to remain in the United States as an M-1 nonimmigrant until June 17, 2002. On February 26, 2001, the beneficiary received her current approval as an R-1 nonimmigrant with authorization to remain in the United States until December 17, 2003. Thus, the beneficiary was in the United States during the entire qualifying period.

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 support of the petition, the petitioner states:

> In November 1995, [the beneficiary] again visited our headquarters at the City of Ten Thousand Buddhas (CTTB) in Talmage, California. Inspired by the religious purity of this sanctuary and its religious training programs, [the beneficiary] committed herself to embracing the Buddhist doctrines, customs and traditions and decided to embark on a course of study in our four-year *Sangha & Laity Training Program.* She has completed this program and received her Buddhist Laity Trainee Diploma. The *Sangha & Laity*

> *Training Program* is a vigorous religious program for religious workers, located at our religious headquarters at the City of Ten Thousand Buddhas. During this program, [the beneficiary] proved to be a diligent and serious practitioner of the Buddhist principles.
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> * * *
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> Since February 2001, [the beneficiary] has been serving in a full-time capacity as a Religious Instructor at our School where she teaches meditation and Chinese lessons to the girls along with virtues and spiritual aspects of Buddhism. In doing so, [the beneficiary] worked closely with the students in guiding them on various aspects of their moral, social, and spiritual growth, including leading them in Meal Offerings, a daily ceremony attended by all resident clergy and laity in our community. The leadership of the Meal Offering is a honored and respected position. The Meal Offering is a traditional and spiritual part of any devoted Buddhist day. She also serves as a Dormitory Superintendent, rendering individualized counseling in various aspects of their daily lives, from social and health needs to spiritual growth.
>
> Additionally, [the beneficiary] continues to serve as Religious Transcriber. As such, she is required to review and decipher transcriptions of the Venerable Master's commentary on the Sutras, as well as his talks on Buddhist doctrine. [The beneficiary] transcribes the religious materials from audio tapes to written format for publications within our *Buddhist Text Translation Society* (BTTS). [The beneficiary's task requires not only extensive knowledge of Buddhist doctrine in order to accurately review the transcriptions of the religious content into written form, but it also requires ample diligence, as our archive is made up of approximately 5,000 hours of religious sermons and lectures captured on tape. [The beneficiary's] above duties are supervised by

In his denial, the director noted that as the beneficiary's position was "voluntary" and the "petitioner financially supported the beneficiary during the qualifying period," the petitioner could not establish that the beneficiary had the requisite two years of continuous experience in the religious occupation for which classification is sought.

On appeal, counsel argues the district director "mischaracterizes the beneficiary's work as an occupation rather than a vocation." Counsel states:

> Although the beneficiary engages in religious instruction and counseling as part of her daily tasks, her role as the entails a much greater commitment and dedication to religious life.
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> * * *
>
> The beneficiary's commitment to Buddhism as demonstrated in the taking of vows and total commitment to religious life, her rigorous training and practice of Buddhism, and the petitioner's full financial support of the beneficiary and her accountability to the petitioning organization, all demonstrate that she is engaged in a vocation, not an occupation.

We note the original brief contained in the record, which was submitted by another attorney in counsel's firm, makes no assertion that the beneficiary is eligible for classification based upon a vocation. Instead, counsel argued the beneficiary "has been serving as a religious worker for at least two years immediately preceding the filing of the petition," that the "beneficiary's religious occupation relates to traditional religious functions," and that the beneficiary " possesses the religious training and qualifications to perform the religious occupation."

On appeal, counsel states the beneficiary "has taken two levels of lifetime vows, The Five Precepts and The Bodhisattva Precepts."

Counsel submits a document on appeal which describes the process by which a person receives "full ordination" in the Buddhist faith. The document states, "[b]efore receiving ordination, novices must first undergo 108 days of intensive training during which they memorize the *Vinaya Daily Use,* the *Shramanera Vinaya*, the Bodhisattva Precepts in the *Brahma Net Sutra*, and either the Bhikshu precepts or the 348 Bhikshuni precepts. Only then will they be qualified to receive full ordination, which will establish a foundation for their cultivation."

We are not persuaded by counsel's argument and do not find the record contains any evidence to establish the beneficiary is engaged in a vocation. At best, based on the description of the ordination process, the beneficiary may be considered a novice. Pursuant to the plain language of the statute and regulation, if the beneficiary seeks to enter the United States to work as Buddhist nun, then she must have at least two years of experience *as a Buddhist nun* immediately prior to the petitioner's filing date. Because the beneficiary was not fully ordained as a Buddhist nun at the time of filing, we cannot find the beneficiary was a qualifying religious worker, pursuing a vocation, at the time of filing.

Further, throughout the record, the petitioner has variously described the beneficiary's work as being that of a "religious worker," "religious instructor," "Dormitory Superintendent," and "Religious Transcriber," not as Buddhist nun. Therefore, the record does not support counsel's contention on appeal that the beneficiary has been or would be pursuing a religious vocation as defined under the religious worker provisions. Accordingly, the past and proposed duties of the beneficiary must be addressed as a lay worker in a religious occupation pursuant to section 101(a)(27)(C)(ii)(III) of the Act.

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 the regulations. 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. The regulation reflects that non-qualifying positions are those whose duties are primarily administrative or secular in nature.

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.[1]

The regulation specifies that religious occupations involve activities that are related to traditional religious functions. The nature of the activity performed must embody the tenets of the particular religion and have religious significance. Their service must be directly related to the creed of the denomination.

The petitioner describes the beneficiary's duties:

Religious Instructor:	Teach meditation and Chinese lessons. Works closely with the students in guiding them on various aspects of their moral, social, and spiritual growth, Including leadership in Meal Offerings. Teaches virtues and spiritual aspects of Buddhism and trains the young girls for a life devoted to the worship and respect of Buddha.
Dormitory Superintendent:	Offer individualized counseling to girls in the [redacted] Secondary Girls School in areas pertaining to social well-being and spiritual growth.
Religious Transcriber:	Apply knowledge of Buddhist doctrine to accurately review and decipher audio transcriptions of religious lectures and sermons presented in traditional formal Buddhist lecture style. Prepare transcriptions into written format for publications within the *Buddhist Text Translation Society.*

Though the petitioner identifies the beneficiary's job titles with those found in the regulation as qualifying occupations, it is important to consider the actual duties of the position. A religious organization cannot secure benefits for an ineligible alien simply by referring to the alien's position with a title such as "Religious Instructor" or "Religious Transcriber." In short, the beneficiary's job *duties*, rather than her title, will determine her eligibility. To hold otherwise would permit religious organizations to sidestep immigration law simply by giving qualifying job titles to all their employees.

Further, given the petitioner's description of the beneficiary's duties, we find that each position is separate and distinct from the other. It is clear that the petitioner's duties encompass three separate positions rather than one position which encompasses the duties of a religious instructor, a religious transcriber, and a dormitory superintendent. The petitioner's attempt to cobble a full-time position out of three separate, positions is not sufficient to meet the requirements of the regulation.

Review of the record reveals that the petitioner does not establish that its religious denomination typically or

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[1] As noted above, in her appellate brief, counsel argues that the beneficiary is engaged in the pursuit of a vocation rather than an occupation. In arguing the beneficiary's work is in a vocation, counsel acknowledges CIS' interpretation of the term "traditional religious function" as requiring a petitioner to establish a beneficiary's position is a permanent, full-time, salaried occupation with the denomination. Counsel does not refute this interpretation, but rather attempts to clarify that because the beneficiary is pursuing a vocation, she "need not be salaried in the conventional sense [if the beneficiary is] fully supported and maintained by their religious institution and are answerable to that institution."

traditionally employs and compensates individuals who perform the functions described as the beneficiary's duties, as opposed to utilizing the services of unpaid volunteers from the congregation. The evidence demonstrates that the petitioner availed itself of the beneficiary's unsalaried services for several years prior to the filing date. Clearly, such evidence does not readily suggest that the beneficiary's position is generally regarded as a compensated and exclusive position, rather than a duty undertaken by a knowledgeable member of the Buddhist community.

We note the beneficiary's statement submitted on appeal that on "March 1, 2003, [the] DRBA began paying [her] at a rate of $1600 per month." The beneficiary's statement is corroborated by a Quarterly Wage and Withholding report submitted on appeal, which demonstrates the beneficiary received $4,800 in wages for the quarter ending June 30, 2003. The fact that the beneficiary first began receiving a salary in March 2003 further undermines a finding that the beneficiary's position is considered permanent, full-time, salaried occupation within the denomination.

Even if the petitioner were able to establish the beneficiary's duties relate to a traditional religious function and thus, could be considered a religious occupation, because the beneficiary was employed as a volunteer during the majority of the requisite two-year period, the petitioner cannot establish that the beneficiary has continuously worked for the petitioner as required by the regulation. Moreover, given that the beneficiary splits her time between the three separate positions, the petitioner cannot establish that the beneficiary has worked full-time in any one of the positions.

We, therefore, agree with the director's determination that the petitioner has failed to establish the beneficiary seeks to enter the United States to work in a religious vocation or occupation or that the beneficiary has been carrying on such work continuously for at least the two-year period prior to the time of filing.

The remaining issue is whether the petitioner has the required tax-exempt status. 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the employer 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.

In support of the petition, the petitioner submitted a copy of a letter from the Internal Revenue Service, dated March 16, 1972. In this letter, the Internal Revenue Service indicates that it has determined the Sino-American Buddhist Association, Inc. is exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

The petitioner also submitted a letter dated April 24, 1984 from the Internal Revenue Service acknowledging the receipt of the petitioner's change of name from [redacted] The Internal Revenue Service letter refers to the petitioner's original date exemption, March 16, 1972, and states, "[t]he changes indicated do not adversely affect your tax exempt status and the exemption letter issued to you continues in effect."

In his decision, the director states the petitioner "has not established that it qualifies as a non-profit organization." The director does not elaborate on this statement or provide any reasoning for making such a determination.

On appeal, counsel for the petitioner resubmits the letters described above and argues that such evidence sufficiently establishes the petitioner is bona fide nonprofit, religious organization. Counsel also submits copies of the petitioner's 2001 tax returns indicating that the petitioner files taxes as a nonprofit organization,[2] and a printout showing the petitioner is listed on the IRS website as an exempt organization.

We concur with counsel's argument 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.

While the determination of an individual's status or duties within a religious organization is not under the purview of 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 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.

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[2] The employer identification number listed on the petitioner's 2001, Form 990-T, is the same number as assigned by the IRS in the petitioner's exemption letter.