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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: FEB 22 2005
WAC 03 259 55062

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:



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 (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a Buddhist organization. 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 head nun. 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.

On appeal, counsel submits a brief and additional 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.

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 an August 24, 1989 letter from the IRS to the Avatamsaka Buddhist Lotus Society in Cupertino, CA, granting it tax-exempt status under section 501(c)(3) of the IRC as an organization described in sections 509(a)(1) and 170(b)(1)(A)(i). The petitioner submitted a copy of a June 9, 1989 letter from the California Franchise Tax Board to the same organization at the same address, granting the organization exemption from state franchise and income tax as a religious organization. The petitioner also submitted a copy of a 1998 Form 990-EZ, Short Form Return of Organization Exempt from Income Tax. The document contains no financial information, but does reflect the petitioner as the filer and its current address. The document bears an IRS date stamp. A partial copy of an IRS Form 6800, which contains no identifying information, contains an annotation in Block 26 notifying the filer that IRS records reflect that it is a church exempt from filing a return.

In a request for evidence (RFE) dated September 30, 2003, the director advised the petitioner that the evidence of tax-exempt status did not match the petitioner's location, and to provide evidence of the petitioning organization's tax-exempt status. In response, the petitioner stated that it moved to its current location in 1991. In addition to other documentation, the petitioner submitted a June 6, 1995 letter from the IRS, advising the petitioner at its current address that the IRS had recognized it as a 501(c)(3) tax-exempt organization as an organization under section 170(b)(1)(A)(i) of the IRC in April 1989, and that the exemption remained in effect. It is noted that the employer identification number listed on the 1989 and 1995 IRS letters is the petitioner's claimed employer identification number.

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

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 September 16, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as head nun throughout the two-year period immediately preceding that date.

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. That the qualifying work should be paid

employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

The petitioner states that it believes the proffered position is the equivalent to that of a minister and must be filled by a "monk/nun who is proficient in Buddhist knowledge and capable to preach the profound ideas of Avatamsaka Sutra." In its letter of September 8, 2003, the petitioner stated that the beneficiary began working for the petitioning organization as head nun after entering the United States in July 2001. The petitioner stated:

[The beneficiary's] one main duty is to lead and conduct Buddhist events such as morning and evening prayer daily and special event prayers. She was required to perform regular religious duties such as daily chanting of sutra, playing Dharma instruments . . . The Beneficiary was to conduct Buddha offering, and to participate in other Buddhist religious ceremonies such as prayers, meditation, birth, death, and matrimonial service . . . [and] to schedule the Buddhist minister assignments, the morning and evening chanting services, and the special Buddhist ceremonies as requested.

The petitioner stated that among the beneficiary's administrative duties were to "ensure that [the petitioner] was undergoing smooth operation and that the operation was in accordance with the traditional Buddhist practice . . . was responsible for the supervision of [the petitioner's] finance[s] and the overall resource distribution . . . [and] to manage the staff relations, and to coordinate between Buddhist minister and office staff." The beneficiary also served as liaison on the petitioner's expansion project. The petitioner stated that the beneficiary's workday started with a 4:20 am wakeup call and continued until 6:00 pm.

In its letter of December 16, 2003, submitted in response to the RFE, the petitioner stated that the beneficiary was paid a remuneration of \$400.00 per month, and provided with room, board, medical care and clothing, in addition to being reimbursed for necessary and reasonable expenses associated with her job. The petitioner submitted copies of canceled checks made payable to the beneficiary in the amount of \$400.00 and dated from September 2001 to May 2002, and April through June of 2003. A check dated in August 2003 is made payable to the petitioner, and a note attached states that the beneficiary donated her salary to the organization during that month. The record also contains checks made payable to the beneficiary in the amount of \$600.00 for the months of June through November 2002, January 2003, and March 2003; in the amount of \$1,400.00 in December 2002; and \$1,200.00 in the month of February 2003.

The petitioner submitted a copy of the beneficiary's certificate of ordination from the Buddhist Association R.O.C., indicating that she was ordained as a "Sramaneri" and a "Bhikshuni" in April 1996, and as a "Bodhisattva" in May 1996.

The record is sufficient to establish that the beneficiary has worked continuously in the religious vocation or occupation for two full years preceding the filing of the visa petition, and that she is otherwise qualified for the visa preference classification.

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 met that burden.



ORDER: The appeal is sustained. The petition is approved.