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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUN 23 2005

WAC 03 268 54399

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.

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 dismissed.

The petitioner is a Hindu temple. 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 priest. The director 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. The director further determined that the petitioner had failed to establish that it had the ability to pay the beneficiary the proffered wage.

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)(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 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 29, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a priest throughout the two-year period immediately preceding that date.

In his résumé submitted with the petition, the beneficiary indicated that he served as head priest at the Tulsi [redacted] from 1997 to 2001 and from "2001 to date," he "gave" his services as a Hindu priest to a "wide community of Fiji island as well as at USA and other countries." The petitioner submitted a January 15, 2001 letter from the [redacted] stating that the beneficiary had worked at that organization as head priest for the last four years. The letter concludes by stating, "We wish Panditji all the best in future." The petitioner also submitted a March 12, 2001 letter fro[redacted] the secretary of the Suva branch of the Shree [redacted] which indicated that the beneficiary was a "well known Pandit (Hindu Priest) of [the] community," and had performed "pujas and religious rites for the Hindu community" for the last four years, while attached to the Tulsi Manas Mandir in Suva, Fiji. These dates correspond to the dates listed by the beneficiary on his résumé. However, the petitioner submitted no documentary evidence to corroborate any work by the beneficiary from September 2001 to the date the petition was filed. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

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 salaried. To hold otherwise would be contrary to the intent of Congress.

In the rare case where volunteer work might constitute prior qualifying experience, the petitioner must establish that the beneficiary, while continuously and primarily engaged in the traditional religious occupation, was self-sufficient or that his or her financial well being was clearly maintained by means other than secular employment.

On appeal, the petitioner submitted a copy of a November 17, 2004 letter from [redacted] the treasurer of the Fiji Sevashram Sangha, who stated that he has known the beneficiary for the past four years and that the beneficiary is a "well reputed Hindu priest in Suva, Fiji." According to [redacted] the beneficiary worked in Suva "as an individual self-employed priest, and gave his services from home to home in our community." A November 16, 2004 letter from [redacted] also states that the beneficiary is a self-employed priest who "supports himself from donations received from devotees." The petitioner submitted no evidence, such as pay receipts, pay vouchers or any other documentary evidence to corroborate the statements of [redacted] and [redacted] *Matter of Treasure Craft of California*, 14 I&N Dec. 190.

Furthermore, the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, indicates that the beneficiary arrived in the United States on July 26, 2003. The petitioner also stated in a September 4, 2004 letter that the beneficiary "has only been working in the United States for a few months." However, the petitioner submitted no evidence of any work performed by the beneficiary after his arrival in the United States.

The record does not establish that the beneficiary was continuously employed as a Hindu priest for two full years preceding the filing of the visa petition.

The director also determined that the petitioner had not established its ability to pay the proffered wage.

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

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this

ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner states that it pays the beneficiary $800 per month and provides him with a furnished apartment with all utilities paid. The petitioner, however, submitted no evidence of the compensation that it provides to the beneficiary. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190. Furthermore, the copies of the petitioner's Forms 941, Employer's Quarterly Federal Tax Returns, for 2003 and 2004 reflect that it had only one employee, and that employee was not the beneficiary.

To establish its ability to pay the proffered wage, the petitioner submitted copies of its December 2003 checking account statement, and a copy of its November 2003 financial statements accompanied by an accountant's compilation report.

As the compilation report is based primarily on representations of management, the accountant expressed no opinion as to whether they present fairly the financial position of the petitioning organization. In light of this, limited reliance can be placed on the validity of the facts presented in the financial statements that have been submitted. No further supporting documentation is included in the record to reflect the assertions made by the accountant in the financial documentation, or contained within the unaudited financial statements.

On appeal, counsel submitted copies of the petitioner's financial statements for August 2003 and August 2004 accompanied by the accountant's compilation reports.

The regulation states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence. As counsel states in his brief, "[t]he regulation neither states nor implies that an unaudited statement may be submitted in lieu of annual reports, federal tax returns, or audited financial statements." The accountants' reports clearly state that no audit has been performed on the financial documentation provided by the petitioner.

The evidence does not establish that the petitioner has the ability to pay the proffered wage.

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.