

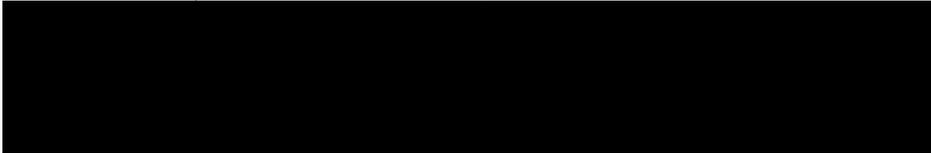
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U.S. Citizenship
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Services

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: MAY 18 2005
WAC 02 241 55087

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition. On further review, the director determined that the petitioner was not eligible for the visa preference classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke the approval of the preference visa petition and his reasons therefore, and subsequently exercised his discretion to revoke the approval of the petition on May 18, 2004. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a "non-profit organization whose purpose is to spread the Dhammakaya meditation technique and Buddhism." 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 an Upasika (dedicated lay staff religious worker). 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 not established that the position qualified as that of a religious worker, that the beneficiary was qualified for the position within the organization, that the petitioner had extended a qualifying job offer to the beneficiary, or that it had the ability to pay the beneficiary a wage.

Section 205 of the Act, 8 U.S.C. § 1155, states that the Secretary of the Department of Homeland Security "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. *Id.*

On appeal, counsel submits a brief and additional documentation.

The first issue is the director's determination that, as the beneficiary entered the United States pursuant to a B-2 nonimmigrant visa for visitor for pleasure, the record does not establish that the beneficiary came to the United States for the sole purpose of working as a religious worker.

The regulation does not require that the alien's initial entry into the United States to be solely for the purpose of performing work as a religious worker. "Entry," for purposes of this classification, would include any entry under the immigrant visa granted under this category or would include the alien's adjustment of status to the immigrant visa. We withdraw this determination by the director.

The second issue is whether the petitioner has established that the beneficiary was continuously engaged in a qualifying religious vocation or occupation for two full years preceding the filing of the visa petition.

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 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."

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 July 25, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as an Upasika throughout the two-year period immediately preceding that date.

In its July 9, 2002 letter, the petitioner stated that the religious worker in the proffered position:

- 1) Assists monks in conducting Buddhist worship services, religious activities, wedding and funeral services.
- 2) Assists in chanting and meditation services.
- 3) Propagates Buddhism in the United States . . .
- 4) Organizes monk and novice ordination program[s].
- 5) Provide religious counseling guidance and spiritual guidance to Buddhist temple believers and members.
- 6) Coordinate activities to visit the sick and the poor.

The petitioner lists the beneficiary's work experience as follows:

In 1987, she became a full-time staff of the [Dhammakaya] Foundation [in Thailand] and handled job duties, which are essential to the daily operation of the Foundation. In 1988, she was one of the writers of the Dhammakaya Foundation newsletter . . . Later in 1991, she became one of the Assistant Coordinator[s] of the North-East member program of the Foundation, which is one of the major program[s] carried out by the Dhammakaya Foundation in Thailand to acquire new members and to spread the principles of the Foundation. [She also] handl[ed] funded projects in the headquarter[s].

The petitioner also indicated that the beneficiary had worked in the United States under an R-1 nonimmigrant religious worker visa since August 14, 2001. The petitioner did not indicate the nature of the position in which the beneficiary worked pursuant to her R-1 visa, and submitted no documentary evidence of any work performed by the beneficiary during the two years preceding the filing of the visa petition. 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).

In response to the director's Notice of Intent to Revoke the visa approval (NOIR) dated March 25, 2004, the petitioner submitted a copy of a letter from the Dhammakaya Foundation, in which its vice president stated that the beneficiary became "an Upasika and permanent full-time staff member" with the organization in 1995. The petitioner submitted no documentary evidence to corroborate the beneficiary's employment with the Dhammakaya Foundation. *Id.*

The petitioner submitted a copy of the Form W-2, Wage and Tax Statement, which it issued to the beneficiary in 2001 and 2002, indicating that it paid her \$1,000 and \$1,800 respectively. The petitioner stated that it also provides the beneficiary with housing on the temple grounds, food, medical, clothing, transportation "and other essentials."

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.

On appeal, the petitioner submits copies of its petty cash disbursement logs and receipts or bills for, among other things, telephone, gas, car maintenance and food. This documentation covers a period from August 2001 to July 2002. Although the beneficiary's name appears on some of the documentation, the majority of the documentation appears to relate to the expenses of the petitioner without particular reference to the beneficiary.

The petitioner submitted no documentary evidence to substantiate the beneficiary's employment from July 2000 to August 2001. Further, the record does not establish that the work alleged to have been performed by the beneficiary in Thailand is the same type of work that she currently performs with the petitioner in the proffered job. The statute and regulation require that the alien must be working in the same religious capacity for which he or she seeks entry into the United States. Although the petitioner states that the proffered position is that of an Upasika, that position is described as that of a "dedicated lay staff religious worker." The description of the duties performed by the beneficiary in Thailand does not match the description of the duties of the proffered position. The evidence does not reflect that, in Thailand, the beneficiary was involved in assisting the monks in worship service, in chanting and meditation services, or organizing monk and novice ordination programs. According to the petitioner, the beneficiary's duties in Thailand prior to the filing of the visa petition were as assistant coordinator of membership development and "handling funded projects."

The record does not establish that the beneficiary has been continuously employed in a qualifying religious occupation or vocation for two full years preceding the filing of the visa petition.

The third issue on appeal is whether the petitioner established that the position qualified as that of a religious worker.

Pursuant to 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work as a religious worker. 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 these proceedings. 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. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

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.

The duties of the proffered position are discussed above. The petitioner stated that, in the position, the beneficiary works approximately 45 hours per week, and that her compensation consists of lodging, food, and a small salary. The evidence reflects that the duties of the position are directly related to the religious creed of the denomination and that the governing body of the denomination recognizes the position.

The evidence sufficiently establishes that the proffered position is a religious occupation within the meaning of the statute and regulation.

The fourth issue on appeal is whether the petitioner established that the beneficiary was qualified for the position within the organization.

According to the petitioner, the position requires an "in-depth understating of the Foundation's principles, policies, and beliefs," and an individual with "the diverse aspects of knowledge in Buddhism and Dhammakaya meditation." The petitioner stated that the beneficiary had become a member of the Dhammakaya Foundation in 1985, and had been active in its activities since that date as a coordinator, assisting in the daily operation of the Foundation, and assisting a major program to acquire new members and "spread the principles of the Foundation." The petitioner also adequately established that the beneficiary had been working in the proffered position for approximately a year prior to the filing of the visa petition.

The evidence sufficiently establishes that the beneficiary is qualified for the position within the organization.

The fifth issue to be discussed is whether the petitioner established that it had extended a qualifying job offer to the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

The petitioner indicated that in the proffered position, the beneficiary works approximately 45 hours per week. The petitioner stated that, as compensation, the beneficiary would receive lodging, food and a small salary in accordance with denominational policies. The evidence sufficiently establishes that the petitioner has extended a qualifying job offer to the beneficiary.

Finally, the director determined that the petitioner had not established that it has the ability to pay the beneficiary a wage.

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

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 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 annual reports, federal tax returns, or audited financial statements.

The petitioner stated in an April 10, 2004 letter that the position “is a monastic life and calling, without expectation of monetary remuneration.” As discussed previously, the petitioner indicated that it provides the beneficiary with lodging on the temple grounds, and provides her with food, medical, clothing and transportation needs in addition to a small stipend for “ancillary expenditures.” The petitioner submitted a copy of a year 2002 Form W-2, indicating that it paid the beneficiary \$1,800. It also submitted copies of its unaudited financial statements for the years 2000, 2001 and 2002, accompanied by the accountant’s compilation reports.

The petitioner also submitted a copy of a letter from a Certified Public Accountant, who stated, “The Petitioner owns, free and clear of encumbrances, 10.42 acres of land . . . that comprises approximately 41,000 sq. ft. within several large buildings and 90-room housing units which are being used as their religious center and residential quarters for all of the religious workers.” The petitioner’s financial documentation for 2002 indicated that it had over \$1.3 million in cash, and copies of its monthly bank statements for 2002 and 2003 reflect balances averaging over \$300,000 each month. Additionally, as noted above, the petitioner submitted copies of various receipts, bills and statements for expenses related to its operations.

The above-cited 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. Although the petitioner submitted a copy of the beneficiary’s 2002 Form W-2, it submitted none of the required types of primary evidence.

The evidence does not establish that the petitioner had the continuing ability to pay the beneficiary the proffered remuneration.

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.