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[REDACTED]

FILE:

[REDACTED]
WAC 03 194 54589

Office: CALIFORNIA SERVICE CENTER

Date: **JAN 17 2006**

IN RE:

Petitioner:

Beneficiary:

[REDACTED]

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

Σ Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) remanded the matter for further action and consideration. The director subsequently denied the petition a second time, and certified the decision to the AAO for review. The AAO will affirm the director's decision and the petition will be denied.

The petitioner operates a number of Jewish educational centers. 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 religious editor. The director originally determined that the petitioner had not established that the position offered constitutes a qualifying religious occupation involving a traditional religious function. The AAO reversed this finding, and remanded the matter for a new decision. In its remand order, the AAO observed that the record did not establish that the beneficiary had performed her religious occupation continuously throughout the two years immediately preceding the filing of the petition. The director subsequently found that the petitioner had not overcome this basis for denial, and again denied the 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 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) 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)(3)(ii)(A) requires the petitioner to demonstrate 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 June 18, 2003. Therefore, the

petitioner must establish that the beneficiary was continuously performing the duties of an editor of religious publications throughout the two years immediately prior to that date.

We note that, on the Form I-360 petition, the petitioner indicated under penalty of perjury that the beneficiary had never worked in the United States without authorization. On that same form, the petitioner indicated that the beneficiary's R-1 nonimmigrant religious worker status had expired on April 1, 2003, eleven weeks before the petition was filed. With no valid nonimmigrant status, any work that the beneficiary performed in the United States after April 1, 2003 would have been unauthorized, whether that work was compensated by cash, room and board, or any other consideration. *See Matter of Hall*, 18 I&N Dec. 203 (BIA 1982).

In a letter submitted with the initial [REDACTED] administrator of the petitioning organization, states that the beneficiary "has been a religious editor since 1992." The initial filing includes a photocopy of the Fall/Winter 1999 issue of *Kabbalah*. This publication identifies the beneficiary as the managing editor; she is also credited with "Advertising Sales."

In its October 19, 2004 remand order, the AAO stated:

The only direct evidence in the record to show that the beneficiary has acted as a managing editor is a photocopied issue of *Kabbalah* from 1999. This falls outside the qualifying period, and thus it does not show that the beneficiary acted in that capacity between June 2001 and June 2003. The director must provide the petitioner with the opportunity to submit published materials from 2001-2003, showing that the beneficiary was credited as a managing editor at that time. Contemporaneous internal documentation relating to the beneficiary's editing tasks would also be very valuable in this regard. . . .

We note that, according to the petitioner, the beneficiary works for room and board rather than for a monetary salary. This arrangement qualifies as "employment" pursuant to *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982), but the petitioner must still demonstrate (rather than merely claim) that it provided these considerations to the beneficiary. Demonstrating the existence of a residential facility does not establish who lived there.

We further note that the submitted issue of *Kabbalah* is dated "Fall/Winter 1999." Because the publication is dated not by day or month, but by two seasons, the implication is that *Kabbalah* is published only twice a year (a Spring/Summer issue and a Fall/Winter issue). The petitioner must show that the beneficiary has been *continuously* engaged as a religious editor throughout the qualifying period. If the magazine appears only twice a year, the burden is on the petitioner to show that the preparation of each issue entails six months of full-time editorial work. Because, at present, the record does not show that the petitioner published the magazine at all, further evidence is clearly necessary in this regard.

The petitioner has submitted printouts from its web site, <http://www.kaballah.com>. These printouts show that the petitioner offers various books for sale. These works would entail additional editorial activities, but the petitioner still must demonstrate (rather than simply

claim or assert) that the beneficiary was the editor involved. Again, the beneficiary's editorial work would presumably result in some kind of "paper trail" of contemporaneous documentation.

In short, the petitioner has not established that the beneficiary continuously acted as an editor from June 2001 to June 2003. The director must give the petitioner the opportunity to remedy this deficiency. We note here that, pursuant to 8 C.F.R. § 103.2(b)(2)(i), the non-existence or other unavailability of required evidence creates a presumption of ineligibility. The cited regulation specifies the terms by which secondary evidence will be accepted in lieu of primary evidence, and by which sworn witness affidavits (not unsworn letters) will be accepted in lieu of secondary evidence.

Pursuant to the remand order, on November 18, 2004, the director issued a request for evidence (RFE), instructing the petitioner to "[p]rovide evidence that establishes that the beneficiary was continuously performing the duties of an editor of religious publications throughout the two years immediately prior to the filing date of the Form I-360." In response, counsel states:

[The beneficiary] was a religious editor with The Kabbalah Centre in Toronto from 1992 until August 24, 1998.

She continues to be a religious editor at The Kabbalah Centre in Los Angeles from the date of her arrival in the USA on August 24, 1998 to the present.

[The beneficiary] has been continuously performing the duties of a religious editor for over twelve years.

The petitioner submits a copy of a February 10, 2000 letter [redacted] originally submitted in support of an R-1 nonimmigrant religious worker petition filed on the beneficiary's behalf. This letter predates the qualifying period by over a year and is of no value when determining the beneficiary's activities during 2001 to 2003.

The petitioner establishes that the beneficiary has been under valid R-1 nonimmigrant status since December 15, 2000. The question is not whether the beneficiary has held an R-1 visa, but rather whether she has actually been performing the duties upon which her R-1 status is predicated. Visa documentation is not *prima facie* evidence that the beneficiary has, in fact, been continuously employed as a religious editor.

An undated [redacted] List" includes the beneficiary's name. This document fails to establish the continuity of the beneficiary's work as an editor. It consists of a table with six columns of information: "Last Name," "First Name," "Alias" (i.e., a chosen [redacted] first name), "Citizenship," "Centre" and "Birth date." There is no discussion of duties. The [redacted] List" places the beneficiary at the Centre in New York, which contradicts counsel's assertion that the beneficiary "continues to be a religious editor at The Kabbalah Centre in Los Angeles from the date of her arrival in the USA on August 24, 1998 to the present." Some of the petitioner's past letters have placed the beneficiary in New York; others have indicated only that the beneficiary worked for "the

Kabbalah Centre,” without further specification. [REDACTED] based in Los Angeles, and therefore would not have been in a position to witness, first-hand, the beneficiary’s work in New York. Therefore, we cannot lend significant evidentiary weight to [REDACTED] unsupported claims and assertions.

The petitioner submits three books published by the petitioner during or around the qualifying period. *The Secret: Unlocking the Source of Joy & Fulfillment*, by Michael Berg, shows a 2002 copyright date. On the “Acknowledgments” page, [REDACTED] members of his family, and “[REDACTED] [the beneficiary], who worked so long on this short book.”

The Power of Kabbalah, by Yehuda Berg, has a 2001 copyright date, but it also indicates “A previous edition of this book was published by The Kabbalah Centre in September 2000.” Thus, any work on the book that may have taken place in the second half of 2001 was limited to revision of previously published text. The “Acknowledgments” section identifies the author’s relatives and seven others, including [REDACTED] [the beneficiary], and Linda Friedman, whose contributions to this book and to the Kabbalah Centre are helping to get the wisdom of Kabbalah out to the world.”

The third volume is an “Uncorrected Proof” of *The 72 names of God: Technology for the Soul*, by Yehuda Berg, marked “First Edition May 2003.” The “Acknowledgments” section lists family members and “great Kabbalistic masters,” along with eight other named individuals, including [REDACTED] and [the beneficiary], whose contributions made the physical quality, integrity, and accessibility of this book live up to its spiritual beauty and heritage.” None of the three books identifies the beneficiary as an editor.

The director denied the petition on October 17, 2005. In the certified decision, the director found that none of the materials submitted in response to the RFE demonstrates that the beneficiary worked continuously as a religious editor during the 2001-2003 qualifying period. With regard to the three books discussed above, the director observed that it is “unclear what kind of services [the beneficiary] rendered in the completion of the 3 books mentioned above. It is not apparent that the beneficiary performed any editorial duties on . . . these books.”

In the notice of certification accompanying the director’s decision, the director allowed the petitioner thirty days to submit a brief or written statement in response to the decision. To date, over two months later, the record contains no further response from the petitioner to contest, rebut, or overcome the director’s findings.

The record shows that the beneficiary was involved with the petitioner in some capacity during the 2001-2003 qualifying period, and that she has, at least at times, engaged in editorial work for the petitioner. The petitioner has not, however, established that the beneficiary continuously engaged in editorial duties, despite having been repeatedly put on notice that the record does not establish continuous work. The beneficiary’s work on a twice-yearly magazine in 1999, and her subsequent unspecified involvement with one book per year, does not allow us to conclude with any confidence that the beneficiary has continuously worked in an editorial capacity. The paucity of documentary evidence regarding the beneficiary’s work is particularly acute when we consider that the beneficiary is said to work in publishing, an industry whose purpose is, literally, the generation of documents.

At best, the beneficiary's demonstrated editorial work has been intermittent. We are under no obligation to presume that all of the beneficiary's work on behalf of the petitioner has been religious in nature, or that the total output four years of continuous editorial work would produce one magazine, one revision of a previously published book, and two new books. The exact nature of a religious worker's duties is of more consequence in a religious occupation than in a religious vocation, as 8 C.F.R. § 204.5(m)(2) defines those terms; but the petitioner has consistently argued specifically that the beneficiary works in a religious occupation, and there is no affirmative evidence nor any articulated claim that the beneficiary works, instead, in a qualifying religious vocation.

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, we shall affirm the director's decision to deny the petition.

ORDER: The director's decision of October 17, 2005 is affirmed. The petition is denied.