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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]
WAC 05 078 51710

Office: CALIFORNIA SERVICE CENTER

Date: NOV 02 2006

IN RE:

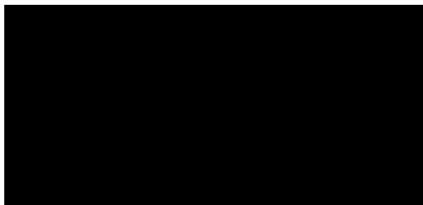
Petitioner:

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:



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

2 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The alien beneficiary seeks classification 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 kindergarten teacher at Ananda Living Wisdom School, operated by Ananda Church of Self-Realization (hereinafter “the church”). The director determined that the petitioner had not established that the position offered to the beneficiary qualifies as a religious occupation, or that the beneficiary had the requisite two years of continuous work experience in the occupation immediately preceding the filing date of the petition.

Part 1 of the Form I-360 petition identifies the church as the petitioner. Review of the petition form, however, indicates that the alien beneficiary is the petitioner. An applicant or petitioner must sign his or her application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, Part 9 of the Form I-360, “Signature,” has been signed not by any official of the church, but by the alien beneficiary herself. Thus, the alien, and not the church, has taken responsibility for the content of the petition, and in this decision the term “the petitioner” shall refer solely to the self-petitioning alien beneficiary. Because the attorney who filed the appeal ostensibly on behalf of the church is also the alien beneficiary’s attorney of record, we consider the appeal to have been properly filed.

On the Form I-290B Notice of Appeal, counsel indicates that a brief will be submitted within 30 days. To date, nearly a year after the filing of the appeal, the record contains no further submission from the petitioner or counsel. We shall consider the record to be complete as it now stands. We shall consider counsel’s one-paragraph statement on the Form I-290B to represent the entirety of the appeal.

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 first issue we shall consider is whether the petitioner seeks to employ the beneficiary in a qualifying capacity. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

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, fund raisers, 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.

[REDACTED] Secretary/Treasurer of the church, describes the position offered to the petitioner:

[The petitioner] is being trained to become the full-time Kindergarten teacher for Ananda School for the 2005-2006 school year. She is presently co-teaching in the Kindergarten through 2nd grade classroom, and also assists in the Preschool part-time to gain experience in early childhood education. In addition, [the petitioner] is required not only to be able to teach academic subjects, but is also expected to convey to the students the principles and practices of the yoga and meditation teachings of Ananda Church of Self-Realization.

[REDACTED] states that the petitioner “took vows as a Novice member of the Ananda Monastic Order.”

The director issued a request for evidence (RFE) on April 22, 2005, in which the director requested “a detailed description of the work to be done.” In response, the petitioner has submitted additional information about the order and about her specific duties. An unsigned letter submitted in response to the RFE reads, in pertinent part: “We believe that [the petitioner] is eligible for a religious ‘special immigrant’ visa because she is working in a religious vocation. . . All her work is carried out within the context of a religious life. She has taken vows to serve her church just as a monk or nun does to serve the Catholic Church.”

The director denied the petition, stating that the petitioner’s “duties do not relate to a traditional religious function. The duties appear to be administrative and secular in nature and do not embody the tenets of the religious denomination.” On appeal, counsel argues that the petitioner “works in a religious vocation as demonstrated by her taking vows to serve the church and her dedication to monastic service.”

Upon consideration of the materials in the record, we agree with counsel that active membership in the Ananda Monastic Order amounts to the practice of a religious vocation, and the director erred in considering the proffered position under the criteria of a religious occupation rather than those of a religious vocation.

While we must withdraw part of the director's decision, owing to the director's failure to recognize that the petitioner seeks to work in a religious vocation rather than a religious occupation, there is more merit to the remaining ground for denial. Indeed, the finding that the petitioner intends to practice a religious vocation rather than a religious occupation arguably strengthens that ground.

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 experience in the religious vocation, professional religious work, or other religious work. The petition was filed on January 24, 2005. Therefore, the petitioner must establish that she was continuously engaged in a qualifying religious vocation throughout the two years immediately prior to that date.

8 C.F.R. § 204.5(m)(3)(ii)(D) requires the petitioner to show that, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother.

In her letter submitted with the initial filing, Catherine Parojinog describes the petitioner's experience. We have already quoted her assertion that the petitioner "is being trained to become the full-time Kindergarten teacher," showing that her training was still ongoing. In the same letter, [REDACTED] states:

[The petitioner] has been a member of Ananda Church of Self-Realization for nearly six years, since February 1999. After completing four years of residential monastic training, [the petitioner] took vows as a Novice member of the Ananda Monastic Order. . . .

She has been employed since December 2000 at our church headquarters near Nevada City, California, primarily as a vegetarian chef and yoga teacher. In the past two years, she has worked at the Church's guest retreat, the Expanding Light, and also at the Ananda Institute for Alternative Living. . . . At the Ananda Institute, she served as Kitchen Manager, reservations and information assistant, and staff person in residence at one of the guest lodges. . . .

Since the fall of 2004, [the petitioner] has been an intern at our Ananda Living Wisdom School at Ananda Village near Nevada City. . . . The faculty of Ananda School are all members of the Ananda Monastic Order.

The petitioner's initial submission includes a letter from the Internal Revenue Service (IRS), dated July 26, 1991, in which the IRS ruled that the Ananda Monastic Order constitutes a religious order for tax purposes. In that letter, the IRS states:

Training for membership in [the] Order involves a prescribed series of training periods totaling seven years before full membership in the Order is possible. . . . [T]he candidates must enter a one-year program of religious study and activity. . . . Following this period is another one-year postulancy period. . . . Next is a five-year novitiate period during which the candidates for membership take conditional vows. . . . If the Church's leaders determine that a novice has completed the novitiate period successfully, they allow the novice to take the final vows of simplicity, self-control, cooperative obedience, and service, which are considered lifetime vows. Less than half of the initial candidates complete all of the training to become "official" members of the Order who take the final vows.

Nowhere in the record does any church official take issue with the IRS' findings. By submitting this letter without any rebuttal or disclaimer, the petitioner has effectively stipulated to its substance.

The director requested more specific information about the petitioner's past experience. In response to the RFE, the petitioner submits an unsigned letter that reads, in part:

[The petitioner] has been a recognized member of the Ananda Church of Self-Realization since March 1999 when she took Discipleship vows.

On August 19, 2000 [the petitioner] took the Kriyaban Vow. . . . This initiation is given only after the Disciple has practiced and achieved proficiency in two preparatory meditation techniques, a process that takes at least a year.

[The petitioner] took the Conditional (Novice) vow in the Ananda Monastic Order on January 5, 2004. . . .

She continues her monastic training with weekly classes in religious studies, and through her work and living situation in our community, in which she interacts with Life vow members and other Novice members on a daily basis.

Thus, the church distinguishes between "Life vow members" and "Novice members," those in the latter category having taken "Conditional" vows. This distinction is entirely consistent with the information in the 1991 IRS letter.

The Ananda Church of Self-Realization has decreed that it takes many years, including a five-year novitiate, to become a full member of the Ananda Monastic Order, and therefore any immigration benefit that the petitioner seeks as a member of that order is contingent upon her complete fulfillment of the church's requirements. In this proceeding, the petitioner is said to have become "a Novice member of the Ananda Monastic Order" in January 2004. Therefore, as of the petition's January 2005 filing date, the petitioner had not even been a novice, let alone a full member of the order, for two years. The petitioner's "five-year novitiate period" was still ongoing at the time of filing in 2005; it is still ongoing now; and it will not be complete until 2009 at the earliest. Only at that time will "the Church's leaders" make a decision as to

earliest. Only at that time will “the Church’s leaders” make a decision as to whether or not the petitioner “has completed the novitiate period successfully.”

The AAO notes that the Ananda Church of Self-Realization filed another I-360 petition on behalf of the alien beneficiary on February 10, 2006. The petition, receipt number WAC 06 103 51856, was approved on April 26, 2006. Given the facts set forth in the present record of proceeding, it would appear that the director approved the new petition in error.

Given that “[l]ess than half of the initial candidates complete all of the training to become ‘official’ members of the Order who take the final vows,” the petitioner’s ongoing training as a novice is not in any way a guarantee that she will successfully complete the program and take the final, permanent vows. Assuming that the petitioner does successfully complete the training and go on to take her final vows, she will not have had two years’ experience as a full member of that order until January 2011 at the earliest. Until that time, any attempt to classify the petitioner as a special immigrant religious worker based on her potential future full membership in the order is premature. The petitioner cannot now qualify for a permanent immigration benefit based on some future rank or title that she may never attain.

The director, in denying the present petition, stated: “The petitioner has failed to establish that the beneficiary has been working continuously in the same capacity as the proffered position for at least the two-year period immediately preceding the filing of the instant petition.” Counsel’s two-sentence statement on appeal does not mention, much less contest, this finding by the director. We find, therefore, that the director’s finding stands unrebutted, and that the record amply supports that finding.

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.