U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: OCT 19 2006

WAC 05 153 51317

IN RE: Petitioner: [redacted]
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:

[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, 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 on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner operates a number of centers dedicated to teaching the Kabbalah, which is derived from Jewish writings. The petitioner 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 Kabbalah instructor. The petitioner indicates that the beneficiary is a *chevre*, who receives no salary but rather works for room, board, medical services and other benefits, plus a small stipend. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a Kabbalah instructor immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary.

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 concerns the beneficiary's prior experience. 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 May 10, 2005. Therefore, the

petitioner must establish that the beneficiary was continuously engaged as a *chevre* throughout the two years immediately prior to that date.

The director determined that the beneficiary had failed to establish the required experience. The director based this finding on two factors. First, the director observed that the beneficiary did not hold an R-1 nonimmigrant religious worker visa until March 9, 2005, only two months prior to the filing date. The director stated that, prior to March 9, 2005, the beneficiary was a J-1 nonimmigrant. Second, the director found that the beneficiary's Vow of Poverty, dated April 1, 2000, is not credible because the document shows the petitioner's Los Angeles address, but the beneficiary did not enter the United States until 2001.

On appeal, counsel observes that the beneficiary was in the United States under a J-1 visa before she received her R-1 visa. Counsel contends that the beneficiary, as a J-1 exchange visitor, performed essentially the same work that she did as an R-1. The petitioner, however, provides no contemporaneous evidence to establish the nature of the beneficiary's work as a J-1 nonimmigrant. Without credible, contemporaneous evidence, we cannot determine whether or not the beneficiary's J-1 experience supports or undermines the petitioner's claims regarding the beneficiary's past work.

According to contemporaneous records, when the petitioner sponsored the beneficiary as a J-1 visitor, the petitioner did not indicate that the beneficiary would be a Kabbalah instructor. Rather, the petitioner identified the beneficiary as a "Research Scholar" engaged in "[a] program . . . to provide research opportunities in the various fields of research conducted by the [petitioner] for qualified foreign research scholars to promote the general interest of international, educational and cultural exchange." The petitioner has not specified the nature of the "research" that the beneficiary undertook as a J-1 visitor, nor has the petitioner shown that the beneficiary's present duties also include similar "research." This apparent discrepancy, not addressed in the director's initial decision, is worth exploring and clarifying before the director issues a new decision in this proceeding.

The director further concluded that the beneficiary was and is an unpaid volunteer, and that unpaid volunteer work constitutes neither qualifying past experience nor a qualifying prospective job offer. We disagree with this finding, however. The petitioner does not indicate that the beneficiary has been, or shall be, working entirely without compensation. Rather, the petitioner asserts that the beneficiary receives room, board, and a stipend in lieu of a cash wage or salary. The Board of Immigration Appeals ruled that an alien who "receives compensation in return for his efforts on behalf of the Church" is "employed" for immigration purposes, even if that compensation takes the form of material support rather than a cash wage. *Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982). Furthermore, the petitioner indicates that, as a *chevre*, the beneficiary is bound by vows to the petitioner, in a manner consistent with the regulatory definition of a religious vocation. If the beneficiary's position constitutes a religious vocation, then it is inappropriate to judge that position by the standards of a religious occupation.

With regard to the aforementioned vows, the director determined that the beneficiary's signed vow of poverty is not credible because it shows the petitioner's Los Angeles address, but it is dated April 1, 2000, when the beneficiary was not yet in the United States. On appeal, the petitioner explains that all vow documents show the address of the petitioner's headquarters, even if the vow is executed at a branch rather than at the headquarters.

This explanation is plausible. We note that the disputed vow document shows not only the petitioner's Los Angeles address, but also the address of its New York branch, and the telephone numbers of numerous branches around the world.

The credibility issues cited by the director are not as serious as the director has indicated. Nevertheless, discrepancies remain, which the petitioner should have the opportunity to rebut. For instance, the petitioner has repeatedly indicated that the beneficiary resides and works in Richmond Hill, New York. The petitioner has, however, submitted a directory of its *chevres*, which places the beneficiary in Los Angeles rather than New York. Discrepancies such as this highlight our strong preference for verifiable, contemporaneous documentation, rather than newly-written letters that purport to describe events that took place years before. If new letters are based on older records, then the records themselves ought to be available for review. If they are not based on such records, then the letters are subject to the inaccuracies and distortions that, as a matter of course, are often seen when recalling events from several years earlier.

As explained above, the stated grounds for denial rest on misinterpretation of evidence and unsupported inferences regarding the beneficiary's J-1 visa. Additional information is necessary. Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.