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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: FEB 26 2010
WAC 08 002 54015

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. On December 12, 2008, the AAO remanded the matter for consideration under new regulations. The director again denied the petition and, following the AAO's instructions, certified the decision to the AAO for review. The AAO will affirm the director's decision.

The petitioner is a Buddhist association. 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 monk. The director determined that the petitioner had not established that the beneficiary has been working continuously in a qualifying religious occupation or vocation for two years immediately preceding the filing of the visa petition.

On certification, counsel asserts that the beneficiary's work in the United States was in an authorized status pursuant to the court's ruling in *Ruiz-Diaz v. United States*, No. C07-1881RSL (W.D. Wash. June 11, 2009). Counsel further asserts that the director's notice of intent to deny (NOID) issued following the AAO's remand "failed to request evidence of religious training and was too broad brush [sic]." Counsel submits a brief and additional documentation in support 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 September 30, 2012, 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 September 30, 2012, 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 issue presented on appeal is whether the petitioner has established that the beneficiary worked continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m) provides that to be eligible for classification as a special immigrant religious worker, the alien must:

> (4) Have been working in one of the positions described in paragraph (m)(2) of this section, either abroad or in lawful immigration status in the United States, and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. The prior religious work need not correspond precisely to the type of work to be performed. A break in the continuity of the work during the preceding two years will not affect eligibility so long as:
>
> > (i) The alien was still employed as a religious worker;
> >
> > (ii) The break did not exceed two years; and
> >
> > (iii) The nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

Therefore, the petitioner must show that the beneficiary had been working in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously for at least the two-year period immediately preceding the filing of the petition. The petition was filed on September 27, 2007. Accordingly, the petitioner must establish that the beneficiary had been continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

The regulation at 8 C.F.R. § 204.5(m)(11) provides:

> *Evidence relating to the alien's prior employment.* Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work, must have occurred after the age of 14, and if acquired in the United States, must have been authorized under United States immigration law. If the alien was employed in the United States during the two years immediately preceding the filing of the application and:
>
> > (i) Received salaried compensation, the petitioner must submit IRS [Internal Revenue Service] documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of income tax returns.

> (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.
>
> (iii) Received no salary but provided for his or her own support, and provided support for any dependents, the petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS.
>
> If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

In its September 14, 2007 letter submitted in support of the petition, the petitioner stated that the beneficiary served as a religious worker at the Bodhi Monastery from August 2001 to August 2006, and that his duties included instructing congregants, leading study groups, developing programs designed to spread the teachings of Buddha, researching and preparing materials for publication, coordinating traditional Buddhist events and ceremonies, and supporting the leaders of the mission. The petitioner did not indicate any work performed by the beneficiary from August 2006 to September 27, 2007, when the instant petition was filed. The record contains a copy of the beneficiary's R-1, nonimmigrant religious worker visa, which was valid from August 29, 2001 to August 28, 2006. The petitioner provided a copy of a Form I-797A, Notice of Action, notifying the beneficiary of approval of his application to change status to that of F-1 student with an effective date of August 12, 2006. The record contains no further documentation regarding the beneficiary's schooling, such as the education institution that he attended or the nature and duration of the program that he was to pursue and how such schooling relates to his religious work.

In denying the petition on February 15, 2008, the director found that the petitioner had failed to submit evidence of the beneficiary's employment subsequent to August 2006.

The record reflects that a previous Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, USCIS receipt number WAC 06 218 53837, was filed on behalf of the beneficiary on July 11, 2006 and denied by the Director, California Service Center, on May 2, 2007. On appeal, counsel argues that, according to the ruling in *Ruiz-Diaz*, a class-action suit to determine whether aliens who are the beneficiaries of a Form I-360 religious worker petition can simultaneously file an application for adjustment of status, the beneficiary's work during this time frame was deemed authorized.

Counsel, however, has not shown that the beneficiary is entitled to the protection of *Ruiz-Diaz*. The court in *Ruiz-Diaz* stated:

> [I]f a beneficiary of a petition for special immigrant visa (Form I-360) submits or has submitted an adjustment of status application (Form I-485) or employment

> authorization application (Form I-765) in accordance with the preceding paragraphs, no period of time from the earlier of (a) the date the I-360 petition was filed on behalf of the individual or (b) November 21, 2007, through the date on which the [USCIS] issues a final administrative decision denying the application(s) shall be counted as a period of time in which the applicant failed to maintain continuous lawful status, accrued unlawful presence, or engaged in unauthorized employment.

The record does not indicate that the beneficiary has filed a Form I-485 application for adjustment of status or a Form I-765, much less that either form was rejected pursuant to 8 C.F.R. § 245.2(a)(2)(i)(B). Even if the petitioner were to establish the applicability of *Ruiz-Diaz*, which it has not, any protection regarding unauthorized employment would have ended on May 2, 2007, when the initial petition was denied.

Regarding the remaining four months of the qualifying period, citing a May 1992 letter from the Acting Assistant Commissioner of Adjudications for the legacy Immigration and Naturalization Service (INS) and an unpublished AAO decision, counsel asserted on appeal:

> The Beneficiary's religious training while on an F-1 visa does not preclude him from an I-360 petition. Studying in the U.S. under a [sic] F-1, may be considered carrying on the vocation "if it can be demonstrated that such study is consistent with the . . . ministerial vocation provided that the [minister] continues to perform the duties of a minister of the religion."

The petitioner resubmitted the notice approving the beneficiary for F-1 status and stated in a March 6, 2008 letter:

> On August 12, 2006, [the beneficiary] changed status from a [sic] R-1 visa to a [sic] F-1 visa. [He] chose to engage in religious training to assist him in performing his duties as a monk. Engagement of religious training does not preclude one from receiving an I-360 petition.

Again, however, the petitioner provided no other documentation regarding the training that the beneficiary was engaged in pursuant to his F-1 visa and information which demonstrates that he continued working as a monk.

In her notice of certification, the director again noted that the petitioner had not provided documentation of the beneficiary's training from August 2006 to September 2007. Counsel argues in a brief submitted on certification:

> [The beneficiary] chose to engage in religious training to assist in his duties as a monk. Engagement of religious training does not preclude one from receiving an I-360 petition. [The beneficiary] chose to take English classes to help him with his religious duties. Specifically, his schooling would assist him with his teaching of

> workshops, spiritual counseling, various religious activities, charity works, and outreach to the community. In addition, [the beneficiary] continues to be involved in Dharma discourse training. It must be noted that [the beneficiary] has taken a life-long vow to be a Buddhist Monk. A Buddhist Monk is a religious vocation. Though, [the beneficiary] went to school, he continued to be a Buddhist Monk living out his vows.

Counsel further asserts that the NOID did not ask for specific "proof of religious training for the qualifying period." Nonetheless, despite notice of the director's concerns in the final decision, the petitioner provided no such proof with the documentation submitted on certification. Nothing in the record supports counsel's contention that the beneficiary's schooling consists of English classes or Dharma discourse training or that the schooling would "assist him" in his work. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner has not established how English language training is considered "further religious training" and that the beneficiary was still employed during his schooling.

The petitioner provided copies of IRS Forms W-2 issued to the beneficiary during the qualifying period by the Bodhi Monastery showing that the beneficiary received $18,000 in 2005 and 2006, The petitioner also provided copies of insurance documents indicating the beneficiary was covered under its policy during the period November 2006 through March 2007. The petitioner, despite at least three opportunities to do so, failed to submit documentation to establish that the beneficiary was still employed as a religious worker while he was in school (from March 2007, the date he was last included on the petitioner's insurance policy, to September 2007, the date of the petition) and that his schooling was "for further religious training."

The petitioner has failed to establish that the beneficiary worked continuously in a qualified religious occupation or vocation for two full years prior to the filing of the visa petition.

The AAO will affirm the certified denial for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The director's decision of June 9, 2009 is affirmed.