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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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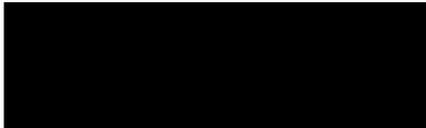
DATE: JUL 12 2011 Office: CALIFORNIA SERVICE CENTER

FILE

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner is a Buddhist foundation. 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 how it intends to compensate the beneficiary.

On appeal, counsel states that at the time the petitioner responded to the director's request for evidence, it "had difficulty in obtaining the requisite evidence to demonstrate how it intended to compensate the beneficiary." Counsel submits a letter 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 how it intends to compensate the beneficiary.

In its July 18, 2009 letter submitted in support of the petition, the petitioner stated that the beneficiary “came to [the] the United State[s] in January 2008 and started religious activities by teaching; giving lectures and meditated technic [sic] etc in our organization.” The petitioner did not indicate any compensation that it had provided or would provide to the beneficiary for his services.

The U.S. Citizenship and Immigration Service (USCIS) regulation at 8 C.F.R. § 204.5(m)(10) provides that the petitioner must submit:

Evidence relating to compensation. Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS [Internal Revenue Service] documentation, such as IRS Form W-2 [Wage and Tax Statement] or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

In an October 19, 2009 request for evidence (RFE), the director instructed the petitioner to submit evidence of how it intends to compensate the beneficiary in accordance with the above-cited regulation.

In its October 30, 2009 response, the petitioner stated:

Based on traditional [redacted] tenets derived from the original orders of Lord Buddha, and dating back 2590 years, we are prohibited from providing a regular wage or stipend to [the beneficiary]. However we provided [him] with a generous sustenance package worth over \$2600.00 per month-consisting of room and board; clothing (robes); medical, dental, and vision coverage; transportation; legal services; and office supplies as a non-salaried compensation.

However, the petitioner submitted no documentation of the compensation that it states it has paid the beneficiary in the past. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The director determined that the petitioner had failed to provide verifiable documentation of how it intends to compensate the beneficiary and denied the petition. On appeal, counsel asserts that at the time of its response to the RFE, the petitioner “had difficulty in obtaining the requisite evidence to demonstrate how it intended to compensate the beneficiary” and that “[w]hile it provided all of the evidence that it had available, the USCIS deemed that it was insufficient.”

In support of the appeal, the petitioner submits a copy of its certificate of incorporation, a copy of a deed for the property located [REDACTED], a copy of a letter from the IRS regarding its exemption from federal income taxes, and copies of its utility bills. The AAO notes that the gas bills indicate the service is for a residential address. The petitioner also provides copies of the beneficiary's telephone and cable bills that show his address as 111 Clay Street and a copy of his insurance card. Additionally, the petitioner submits a copy of an invitation "to attend to the donation ceremony of seasonal offering robe and general meeting for the propagation of Buddha Sasana," and a copy of minutes from a March 28, 2009 meeting to elect a new board of directors.

The petitioner indicated on the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, that the beneficiary will work at the 111 Clay Street address. The petitioner submitted no verifiable documentation to establish that it provides the beneficiary with any lodging at that address. The petitioner submitted no photographs of its facilities that depict the lodging provided to the beneficiary and no documentation that it provides the beneficiary with food and clothing. The petitioner submitted no documentation of its financial status to establish that it has the ability to compensate the beneficiary in the manner stated.

The petitioner has therefore failed to establish how it will compensate the beneficiary.

Beyond the decision of the director, the petitioner has failed to establish that it is a bona fide nonprofit religious organization.

The regulation at 8 C.F.R. § 204.5(m)(5) provides, in pertinent part:

Tax-exempt organization means an organization that has received a determination letter from the IRS establishing that it, or a group that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the IRC of 1986 or subsequent amendments or equivalent sections of prior enactments of the IRC.

Additionally, the regulation at 8 C.F.R. § 204.5(m)(8) provides:

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the [IRS] establishing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or
- (iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under

section 501(c)(3) of the Internal Revenue Code [IRC] of 1986, or subsequent amendment or equivalent sections of prior enactments of the [IRC], as something other than a religious organization:

(A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;

(B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;

(C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and

(D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

The petitioner submitted a copy of a May 25, 2007 advance ruling letter from the IRS. The letter advised the petitioner that it was exempt from federal income tax under section 501(c)(3) of the IRC as an organization described in section 170(b)(1)(A)(vi) of the IRC which pertains to publicly-supported organizations as described in section 170(c)(2) of the IRC, "organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes," or for other specified purposes. This section refers in part to religious organization, but to many types of secular organizations as well.

An organization that qualifies for tax exemption as a publicly supported organization under section 170(b)(1)(A)(vi) of the IRC can be either religious or non-religious. The burden of proof is on the petitioner to establish that its classification under section 170(b)(1)(A)(vi) derives primarily from its religious character, rather than from its status as a publicly supported charitable and/or educational institution. The organization can establish this by submitting documentation as outlined in section 8 C.F.R. § 204.5(m)(8)(iii)(B) and (C) above.

The petitioner has failed to establish that it is a bona fide nonprofit religious organization.

The petitioner has also failed to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation 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 worked 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 August 3, 2009. Accordingly, the petitioner must establish that the beneficiary was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

As discussed previously, the petitioner stated that the beneficiary began religious activities for the petitioning organization in January 2008. The petitioner further stated that from November 2004 to January 14, 2008, the beneficiary pursued graduate studies at the [REDACTED] for Buddhist Studies in Mumbai, India. The petitioner submitted no verifiable documentation to establish that the beneficiary worked in any capacity during the qualifying two-year period. Further, the petitioner stated that the beneficiary was in school for approximately five months of the qualifying period. The petitioner does not allege, and provided no documentation, that the beneficiary worked as a monk during the time he was in school.

The petitioner therefore has failed to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for the two-year qualifying period.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied 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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.