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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 and Immigration Services

[redacted]

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DATE: JUN 02 2011 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

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:

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 [redacted] temple. 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 nun. The director determined that the petitioner had not established that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the petition.

Counsel asserts on appeal that the beneficiary's R-1 nonimmigrant visa did not restrict her work to a specific [redacted] temple. Counsel further asserts that the temple at which the beneficiary first worked and the petitioning organization were established by the same individual and therefore there is a religious connection between the two organizations. Counsel submits a brief 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 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 September 30, 2008. Accordingly, the petitioner must establish that the beneficiary was 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:
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> > (i) Received salaried compensation, the petitioner must submit IRS 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 29, 2008 letter submitted in support of the petition, the petitioner stated that the beneficiary arrived in the United States "in R1 status last year and commenced working at the [redacted]. Due to controversies among the governing body there, she moved to our temple to continue to perform her religious duties without interruption."

In a request for evidence (RFE) dated February 2, 2009, the director instructed the petitioner to submit documentation to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation during the qualifying period as outlined in the above-cited regulation. The director specifically instructed the petitioner that "If any of the experience was gained while working in the United States[,] provide evidence that the beneficiary was employed while in lawful status."

In response, the petitioner stated that the beneficiary was admitted into the United States pursuant to an R-1 nonimmigrant religious worker visa on April 5, 2007 with an authorized stay to April 4, 2010. The petitioner provided a copy of the beneficiary's visa and Form I-94, verifying the above dates. The visa indicated that it was issued in Ho Chi Minh City and did not include an annotation of the organization where the beneficiary was to work. However, USCIS records reflect that the beneficiary entered the United States to work for the [redacted] and the petitioner admits that the beneficiary worked for that organization before moving to work for the petitioner when "controversies" arose with the [redacted]

The director denied the petition finding that the beneficiary did not have authorization to work for the petitioning organization. Under 8 C.F.R. § 214.1(e), a nonimmigrant may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status. On appeal, counsel asserts that "[t]here was no annotation on [the beneficiary's] visa page issued by the Ho Chi Minh City United States General Consulate as to which [redacted] she will work as a religious worker upon her arrival in the United States." Counsel's argument is without merit. Regardless of whether the visa was annotated, R-1 regulations in effect at that time required a letter from an authorized official of the specific organizational unit that would employ the alien and the name and location of the specific organizational unit of the religious organization for which the alien would be providing services

within the United States. 8 C.F.R. § 214.2(r)(3)(ii) and (ii)(E) (2007). The organization that filed the petition on behalf of the beneficiary, the organization that met the requirements of the regulation as it pertains to petitioning organizations, and the basis for the approved entry in the United States was the [redacted], not the petitioner.

The regulations at 8 C.F.R. §§ 204.5(m)(4) and (11) require the beneficiary's prior employment to have been lawful and authorized. Although counsel argues that there was a "common form of worship and formal code of doctrine and discipline" between the two organizations, the fact remains that they were two separate entities, only one of which was authorized to employ the beneficiary. Accordingly, the beneficiary's work for the petitioner was not authorized and interrupted her continuous qualifying work experience for the purpose of this visa petition. Although the director stated that the beneficiary ceased working for the [redacted] on February 10, 2008, there is no evidence in the record to confirm this date. However, it is clear from the petitioner's letter that the beneficiary's association with the [redacted] terminated prior to September 30, 2008, the filing date of the petition and therefore she did not work continuously with that organization for two full years prior to the filing of the visa petition.

Furthermore, the petitioner has failed to establish that the beneficiary worked in any capacity during the qualifying period. Regarding her work during the statutory period while she was not in the United States, although the petitioner stated in its September 29, 2008 letter that the beneficiary "has worked continuously as a [redacted] for close to two decades," it submitted only a January 30, 2007 "Letter of Certification" from the Management Board [redacted] certifying that the beneficiary "teaches [redacted] The petitioner submitted no documentation in accordance with 8 C.F.R. § 204.5(m)(11) to establish the beneficiary's work with [redacted]. Further, the petitioner submitted no documentation of the beneficiary's work in the United States with [redacted]

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

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.