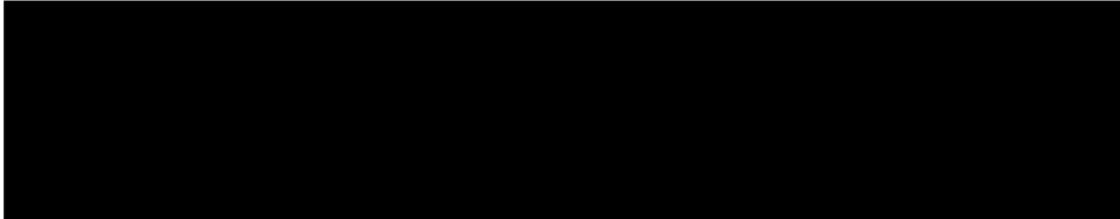


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



C1

Date: **AUG 10 2012**

Office: CALIFORNIA SERVICE CENTER



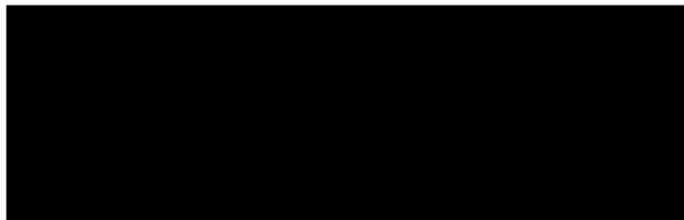
IN RE:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is a Buddhist 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 an assistant abbot monk. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits a brief from counsel, a copy of a receipt notice for a Form I-129 petition filed by the petitioner on behalf of the beneficiary, as well as a copy of a Notice of Decision and a receipt notice for a I-290B, Notice of Appeal, regarding that petition. The petitioner also submits a printout from the website of the Royal Thai Embassy Washington, D.C., documents related to the Form I-360 petition's signatory, Samarn Saengsri, including copies of certificates with translations, and documents relating to The Dhammayut Order in the United States of America (U.S.A), including a history of the organization, bylaws for the Dhammayut Order in the U.S.A. and printouts from that organization's website. The petitioner additionally submits an article entitled "The Bhikkhus' Rules, A Guide for Laypeople," and documents relating to the petitioning temple and Dhammabucha Buddhist Temple, including certificates of membership in The Dhammayut Order in the United States of America, Franchise Tax Certifications of Account Status for both organizations, lists of officers and directors, and copies of utility bills, bank statements, and processed checks. Additionally, the petitioner submits a letter from the Bexar Appraisal District to Dhammabucha Buddhist Temple of Austin, an affidavit with "Explanation of Property Usage," a packing list with accompanying photographs of goods for Dhammabucha Buddhist Temple, and a "Release of Lien" document related to that temple's property. The petitioner also submits a copy of a "Wraparound Warranty Deed with Vender's Lien" for a property in Burnet County, Texas, as well as a Registration Record of Buddhist Monk related 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 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 U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the alien has been working as a minister or 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 April 27, 2011. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work in lawful status throughout the two-year period immediately preceding that date.

The USCIS 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 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.

The petitioner filed the Form I-360 petition on April 27, 2011. According to the petition and accompanying materials, the beneficiary entered the United States on March 27, 2008 in R-1 status

which authorized his employment with [REDACTED] in San Antonio, Texas, until March 27, 2011. In a letter accompanying the petition, the petitioner stated:

In 2008, [REDACTED] was granted a R-1 status with [REDACTED] in San Antonio, TX. He practice monk hood there for about two years before joining our temple.

On a Form G-325, Biographic Information, submitted with the petition, the beneficiary indicated that he was employed by [REDACTED] as a Buddhist monk from March of 2008 to October of 2010, and that he was employed by the petitioner as an assistant abbot monk from October 2010 to the present. The record does not indicate that the beneficiary held authorization to work for the petitioner during the two-year qualifying period immediately preceding the filing of the petition. Accordingly, any work performed for the petitioner during that period would not be considered qualifying employment.

In an affidavit submitted with the petition, [REDACTED] stated the following:

I am the [REDACTED] and [REDACTED] of San Antonio, Inc. and have been since 1986. ...

I am also the [REDACTED] and [REDACTED] located in Marble Falls, TX, [REDACTED] was created to serve the Central Texas area since 2000. ...

In 1998, I was given the title of [REDACTED], by the Supreme Council of Buddhists Monk in Thailand. [REDACTED] was founded and created by me under the [REDACTED] Temple of San Antonio. ...

In 2006, I petition for [REDACTED] on an R-1 visa from Thailand. [REDACTED] has been working for my temple every [sic] since he arrived in the United States in 2008.

The petitioner submitted documentation of [REDACTED] leadership positions in both [REDACTED] and the petitioning temple, and documentation that both temples are members of The [REDACTED] Order in the United States of America. The petitioner also submitted an affidavit of Pitt Visit, Vice-Chairman of the Board of Directors of the petitioning temple, in which he stated that all of the petitioner's financial records are reported "to [REDACTED] of San Antonio, [REDACTED] [REDACTED]

On October 5, 2011, USCIS issued a Request for Evidence, instructing the petitioner to submit evidence "to establish that the beneficiary is maintaining his or her nonimmigrant status."

In a letter responding to the notice, counsel for the petitioner stated:

Please note that USCIS denied the Petitioner's R-1 extension (Form I-129) on behalf of [REDACTED] on October 5, 2011; therefore, we are unable to produce the documents that you have requested. We firmly believe that the Service has erred in its decision to deny the extension and we have filed an appeal of that decision on November 8, 2011 along with a brief and supporting documents (see copy of I-290B receipt notice). We kindly request that you suspend further action on this matter until a final decision is made on our client's pending appeal.

The petitioner submitted a copy of a Form I797C receipt notice dated November 8, 2011, for a Form I-290B, Notice of Appeal or Motion.

On February 8, 2012, the director denied the petition, finding that the beneficiary's lawful immigration status expired on March 27, 2011. The director therefore determined that the petitioner failed to establish that the beneficiary was lawfully employed as a religious worker for at least the two years immediately preceding the filing of the petition.

On appeal, counsel for the petitioner states, in part:

Although [REDACTED] ("Petitioner") petitioned in some capacity for [REDACTED] it is the [REDACTED] that should be identified as the effective employer. The two temples were given authority to petition for [REDACTED] on behalf of the [REDACTED] but in the end, it is the [REDACTED] Order that sets the premise for the manner in which all its members operate.

The Service erred in its decision to deny the I-129 because [REDACTED] never fell out of status. He entered the U.S. as a religious worker and was originally assigned to [REDACTED] which filed the I-129. He was later asked to perform the same duties at [REDACTED] ("Petitioner") which filed the I-129. [REDACTED] first entered the U.S. in 2008 and continually worked under the authority of the [REDACTED] Order through both [REDACTED] and Petitioner. Since they all fall under the same entity, Monk [REDACTED] should be considered to have continually worked in lawful status since 2008 that meets the requirement in 8 C.F.R. 204.5(m)(4).

The petitioner again submits evidence regarding the [REDACTED] Order in the United States and the membership of the two employing temples in that organization, as well as evidence of [REDACTED] role in both of the temples.

To the extent that the director found that the beneficiary maintained his lawful nonimmigrant status until the expiration of such status on March 27, 2011, the AAO disagrees with that finding. The regulations at 8 C.F.R. § 214.2(r)(3)(ii)(E), as were in effect when the beneficiary was approved as an R-1 nonimmigrant, required an authorized official of the organization to provide the "name and location of the **specific organizational unit** of the religious organization" for which the alien would work (emphasis added). The regulation at 8 C.F.R. § 214.2(r)(6) stated:

Change of employers. A different or additional organizational unit of the religious denomination seeking to employ or engage the services of a religious worker admitted under this section shall file Form I-129 with the appropriate fee Any unauthorized change to a new religious organizational unit will constitute a failure to maintain status”

Further, the regulation at 8 C.F.R. § 214.1(e) provides that a nonimmigrant may engage only in such employment as has been authorized. Any unlawful employment by a nonimmigrant constitutes a failure to maintain status.

In this instance, the beneficiary’s R-1 status only authorized his employment with the named employer, [REDACTED] of San Antonio, Texas. Regardless of the shared governance of [REDACTED] and the petitioner by [REDACTED] Order, the beneficiary was not authorized to engage in employment with any affiliated organization or organizational unit without first obtaining authorization through the filing of a separate Form I-129 petition. The evidence indicates that the beneficiary began working for the petitioning temple in October, 2010. By working for the petitioner, the beneficiary engaged in unauthorized employment, thereby failing to maintain his R-1 nonimmigrant status.

Counsel notes that, as of the time of filing of the instant appeal, the petitioner’s appeal of the denial of its Form I-129 petition with application for extension of the beneficiary’s R-1 status was still pending. As there is no appeal from the denial of an application for extension of stay filed on Form I-129, the AAO has withdrawn the director’s decision on that matter and remanded the petition for further action and consideration. Regardless, the record indicates that the Form I-129 petition was filed on December 3, 2010. Accordingly, the outcome of that matter is not relevant to the AAO’s finding that the beneficiary worked for the petitioner without authorization in violation of his nonimmigrant status beginning in October, 2010.

As an alternative argument, counsel argues on appeal that the beneficiary did not engage in unauthorized employment because “Buddhist monks do not work in any traditional sense and therefore, their work do [sic] not constitute ‘employment.’” Counsel notes that the beneficiary took an oath of poverty and does not receive wages, instead receiving transportation, room and board from the temple.

The AAO does not find counsel’s argument persuasive. The Board of Immigration Appeals has 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. *See Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982). The beneficiary’s service as a monk in exchange for non-salaried compensation from the petitioner therefore constitutes employment, and the regulation at 8 C.F.R. § 204.5(m)(11) states that such employment must have been authorized under United States immigration law.

For the reasons discussed above, the AAO agrees with the director’s finding that the petitioner has not established that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

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.