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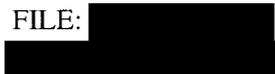
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



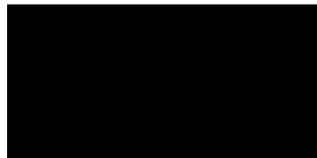
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DATE: MAR 09 2012 OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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.

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 withdraw the director's decision. Because the record, as it now stands, does not support approval, the AAO will remand the petition to the California Service Center for further consideration and action.

The petitioner is a branch temple of the [REDACTED]. 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 preacher. The director determined that the petitioner had failed a compliance review after a site check revealed that the petitioner's location appeared to be a private residence rather than a place of worship.

On appeal, counsel submits a brief, a letter from the owner of the property in which the petitioner's temple is located, photos and a video demonstrating the physical makeup of the property, a letter from a California attorney attesting to the fact that religious services are held at the address of record, and signatures of over 70 members of the petitioner's temple stating that it functions at that location.

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 petitioner filed the Form I-360 petition on February 5, 2009. [REDACTED] of the petitioner's organization, stated in a January 5, 2009 letter that the beneficiary has been a member of the [REDACTED] since March 1, 1997 and that she has worked for the organization as a preacher in Canada and in New York since September 28, 1999. [REDACTED] stated that the petitioner would like to hire her permanently and provide her \$1,500.00 a month in compensation. The petitioner has indicated that the beneficiary will be leading weekly and semi-monthly religious services, scheduling and coordinating ceremonies, teaching religious classes, and organizing seminars.

On April 13, 2009, the director issued a Request for Evidence (RFE), asking the petitioner to provide various forms of evidence, including evidence regarding the location in which its organization operates. Specifically, the RFE called for the petitioner's lease agreements or mortgage payments, occupancy permit, bills showing its address, brochures, and photographs showing the inside and outside of the petitioner's building. In its May 21, 2009 response, the petitioner stated that [REDACTED] purchased and donated [REDACTED] new building. The petitioner held the inauguration ceremony for the new worship center located on [REDACTED] property on May 30, 2008. The petitioner included a signed statement from [REDACTED] stating that she is responsible for the mortgage payment for the worship center and that the petitioner is responsible for expenses for the worship center such as utilities and phone bills. The petitioner also submitted a deed and title report for the property, a copy of a mortgage payment that [REDACTED] had made, utility bills and bank statements demonstrating that the petitioner had been paying the expenses for the worship center, photographs of the petitioner's organization's location showing the worship center's inside and outside, and photographs of the petitioner's inauguration ceremony.

On December 1, 2009, the director issued a Notice of Intent to Deny (NOID) the petition. The director stated that U.S. Citizenship and Immigration Services (USCIS) conducted a site check on August 19, 2009 of the petitioner's address of record. The USCIS officer described the facility as a single-family residence in a gate guarded residential area with no viewable signage reflecting the organization's name or purpose. The officer determined that USCIS was unable to verify the existence of the religious organization at the time of the site visit. The director invited the petitioner to submit any additional information demonstrating its location within 33 days.

In response to the director's December 1, 2009 NOIR, the petitioner indicated that its main worship hall has a separate entrance from that of the attached residential home. The petitioner stated that the worship hall has a sign above its entrance, which states [REDACTED] in Chinese characters. The petitioner additionally stated that there is a large concrete paved parking lot that is located next to the main worship hall to accommodate members' parking needs. The petitioner stated that the worship hall was completed in May of 2008. The petitioner submitted construction plans for the facility as well as inspection permit approvals and photos of the grand opening ceremony for the center. The petitioner further explained that the worship center of the [REDACTED] is only open to its members when religious activities or classes are being held. The petitioner submitted its corresponding schedule of activities. Thus, the petitioner concluded that the [REDACTED] was not open when USCIS conducted its unannounced site visit. Otherwise, USCIS could have entered

the property and viewed its worship facility. The petitioner invited USCIS to conduct another site visit.

The director concluded that the petitioner may have put up its sign stating its name above the entrance to the worship hall after USCIS conducted the site check. The director also found that the photos the petitioner submitted did not contain an address showing the location of the religious organization. Accordingly, the director denied the petition.

On appeal, counsel emphasizes that [REDACTED] purchased the property containing a single-family dwelling in March of 2003 and that the petitioner's worship center, which she had donated, was not completed until May of 2008. Counsel contends that [REDACTED] has not only paid for the construction of the worship center located on her property, she has also granted continued access to it for the petitioner's members. He further asserts that the petitioner is solely responsible for utility and phone bills for the worship center. Counsel contends that the sign indicating the name of the [REDACTED] in Chinese characters has been in place above the door of the worship center since the date of its inauguration in May of 2008.

Counsel asserts that the submitted pictures of the inauguration ceremony demonstrate that the sign was in place as of that date. However, that sign is not visible from the street entrance to the property. Thus, counsel states that USCIS officers would not have been able to view it if they were viewing the property from the entrance. Furthermore, counsel emphasizes the sign is written in Chinese characters, not in English. Accordingly, USCIS officers would only have been able to see the street address on the front gate, a long driveway, and the residential building and worship hall. Counsel indicates that it is understandable that the overall complex might appear to be residential in nature from the street. Furthermore, counsel highlights that it is not possible to capture both the street number [REDACTED] and the [REDACTED] sign within one picture due to the setup of the property and its long driveway.

To demonstrate this point, counsel submits a video that fully demonstrates the logistics of the property. Counsel additionally submits an affidavit from a local attorney attesting to the existence of the petitioner's organization at that location and signatures from over 70 of the [REDACTED] members confirming the existence of the worship hall and the activities conducted at the petitioner's address of record. Counsel, on behalf of the petitioner, again invites USCIS to revisit the property so that it can see the physical layout of the property from the inside of the entrance gate and so that it can witness the petitioner's religious activities.

USCIS compliance reviews at several sites relating to this denomination have revealed a pattern in which aliens secure immigration benefits as "completely devote[d]" church workers and then, soon afterwards, secure other employment and reduce or end their commitment to the petitioning church. The existence of this pattern does not, by itself, justify broad-brush denials or revocations of all petitions from this petitioner, but it is highly relevant when the facts of an individual petition conform to that pattern.

Nonetheless, the AAO finds that the petitioner has submitted a reasonable explanation to rebut the findings of the investigating officers regarding the existence and location of the church. The matter is remanded for the director to determine if an additional site visit is appropriate for the location that the petitioner currently identifies as its worship site.

On remand, the director may also wish to consider the location's zoning as a single family residence and whether such zoning precludes use as a religious facility. Further, as it relates to the regulation at 8 C.F.R. § 204.5(m)(11), the director may consider the claim of the beneficiary's former employer that the beneficiary was a "volunteer." Although the former employer claims that it provided for the beneficiary's "living expenses such as room, board medical needs, and traveling," the record contains no supporting evidence of such non-salaried compensation. Similarly, the director may consider whether the petitioner has established its ability to compensate the beneficiary pursuant to the regulation at 8 C.F.R. § 204.5(m)(10).

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 AAO for review.