

(b)(6)

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]

DATE: JAN 30 2014

OFFICE: CALIFORNIA SERVICE CENTER

FILE: [Redacted]

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in cursive script that reads "Ron Rosenberg".

Ron Rosenberg
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. The petitioner seeks classification of 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 minister/monk. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits additional documentation and states that it has established that the beneficiary had the requisite two years of continuous work experience as a minister/monk immediately preceding the filing date of the petition and that the petition should be approved.

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 beneficiary 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 Form I-360,

Petition for Amerasian, Widow(er), or Special Immigrant, was filed on November 2, 2012. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work 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.

In an addendum to the petition, the petitioner stated that the beneficiary "has been a monk for 10 years," and that he currently studies dharma at [REDACTED] in [REDACTED] Thailand. The petitioner provided a list of certificates awarded to the beneficiary for religious study as well as copies of the certificates, each of which referred to the beneficiary as a "monk."

On December 20, 2012, the director issued a Request for Evidence (RFE) asking, in part, that the petitioner provide evidence that the beneficiary had been working for two years immediately preceding the filing of the petition as a minister of the religious denomination, in a religious vocation either in a professional or nonprofessional capacity, or in a religious occupation either in a professional or nonprofessional capacity. Specifically, the petitioner was asked to provide experience letters written by the previous and current employers including a breakdown of duties performed in the religious occupation for an average week. Such documentation was to also include the employer's name, specific dates of employment, specific job duties, number of hours worked per week, the form and amount of compensation paid to the beneficiary and the beneficiary's level of

responsibility/supervision. The petitioner was additionally instructed to provide evidence of compensation received.

In response to the director's request, the petitioner provided ordination documentation showing that the beneficiary was ordained as a Buddhist monk on June 28, 2002. The petitioner also submitted the beneficiary's personal biography, dated March 26, 2012 and signed by the beneficiary, which states that he became a monk at the age of 25 years (Date of Birth: [REDACTED] and continued as a monk until the date of the biography, a period of 10 years.

The director denied the petition on May 14, 2013, finding that the petitioner failed to establish that the beneficiary had the requisite two years of qualifying work experience immediately preceding the filing of the petition.

On appeal, the petitioner provides a letter of certification dated June 7, 2013 from the [REDACTED] which states that the beneficiary is 36 years of age and has been a monk for 11 years. The letter further states:

At present, he stays at [REDACTED] to further study and he has good conduct according to the Doctrine and Discipline; he is respected and believed by general people and Dhamma friends, he helped society in several matters, for example, promote and support with Tripitaka Book, the Commentary, he help teaching, translating the Commentary, promote studying and teaching in education institute in Thailand and Cambodia. He has never cancelled from monkhood.

The petitioner also submits a letter of certification dated May 29, 2013 from the Director, [REDACTED] which states that the beneficiary is 36 years of age, has been a monk for 11 years, stays at [REDACTED] and has been "studying [REDACTED] from January 5, 2007." The letter states that the beneficiary has never left the Buddhist monkhood and is presently "a student in class of [REDACTED] identification code 2-6746, [REDACTED] academic year, 2013."

The petitioner's evidence does not establish that the beneficiary has been performing full-time work as a monk for at least the two-year period immediately preceding the filing of the petition. When establishing prior employment, the above cited regulation requires IRS documentation of non-salaried compensation if available, and for comparable evidence if employed outside the United States. The director specifically asked for this information, using the same language as the regulation. The petitioner did not provide proof of non-salaried compensation as requested, either in response to the director's RFE or on appeal to establish that the beneficiary had been continuously employed in a religious vocation. Both of the letters submitted on appeal state that the beneficiary currently "stays" at [REDACTED] but neither letter provides the specific dates of his residence at that temple. Further, the letters fail to indicate that this housing is provided as non-salaried

compensation for religious work as a monk, and the petitioner submits no documentary evidence in support of the assertions included in the letters. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). As such, the petitioner has failed to establish that the beneficiary was continuously employed in a qualifying, compensated position for the two years immediately preceding the filing of the petition in this instance.

As an additional matter, the petitioner has not established how it intends to compensate the beneficiary. The AAO may deny an application or petition that fails to comply with the technical requirements of the law 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 USCIS regulation at 8 C.F.R. § 214.2(m)(10) provides:

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 documentation, such as IRS Form W-2 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.

With regard to the beneficiary's compensation, the petitioner indicates on the Form I-360 that monks in the Buddhist faith are prohibited from having money or possessions beyond the ordinary furnishings of a monk and that monks live off the charity of others. The petitioner states that the only compensation to be paid to the beneficiary by the petitioner is "a place to live, meal[s], clothes and the necessities of life."

The petitioner has presented evidence of its ownership of real estate which serves as its place of worship. However, the petitioner has not established where the beneficiary will live. There is no evidence of living quarters within the petitioner's temple, nor has the petitioner provided proof of other living quarters for the beneficiary that would be paid for by the petitioner. Thus, the petitioner has not established how it will compensate the beneficiary by way of providing for his housing.

The petitioner did submit copies of three months of bank statements, stating that those statements are evidence of its cash balances which show the ability to pay for any incidental living expenses for the beneficiary which are not provided by donations and gifts from its congregants. Three months of bank statements, however, are insufficient to show the ability to provide for the beneficiary's room,

board and other necessities. The record contains no evidence of the petitioner's budgets, expenses or regular receipts. Therefore, it cannot be determined from the information provided that the petitioner's funds are sufficient to pay its ongoing expenses plus the non-salaried compensation of the beneficiary.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.