

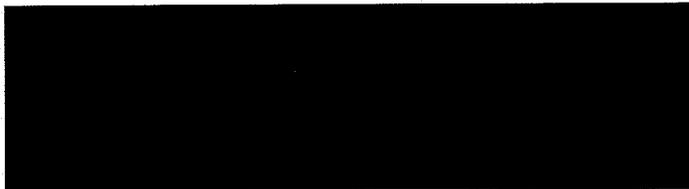
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
EAC 02 138 54442

Office: VERMONT SERVICE CENTER

Date: AUG 12 2005

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: 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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion to reopen will be granted; the petition will be denied.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Citizenship and Immigration Services (CIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

On motion, counsel submits additional documentation.

In its letter of March 8, 2002, the petitioner stated that it was operated by the Kripalu Yoga Fellowship. In its previous decision, the AAO identified this organization as the Kripalu Yoga Foundation, and found that the petitioner had not established a relationship between the Kripalu Yoga Foundation and the Kripalu Yoga Fellowship. We withdraw this statement by the AAO. Although [REDACTED] Director of Human Resources and Organizational Effectiveness for the petitioner, in her letter of March 7, 2003, referred to the organization as the Kripalu Yoga Foundation, all other evidence in the record references the Kripalu Yoga Fellowship. On motion, the petitioner states that the use of the term "foundation" was a clerical error.

In its previous decision, the AAO affirmed the director's determination that the petitioner had not established that it was a bona fide nonprofit religious organization. The regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

(3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

The petitioner must either provide verification of individual exemption from the Internal Revenue Service (IRS) of coverage under a group exemption granted by the IRS to the denomination, or such documentation as is required by the IRS to establish eligibility as a tax-exempt nonprofit religious organization. Such documentation to establish eligibility for exemption under section 501(c)(3) includes: a completed Form 1023, a completed Schedule A attachment, if applicable, and a copy of the articles of organization showing, *inter alia*, the disposition of assets in the event of dissolution.

The petitioner submitted a copy of letter from the IRS to the Yoga Society of Pennsylvania granting that organization tax-exempt status under section 501(c)(3) of the Internal Revenue Code (IRC) as an organization described in section 509(a)(2) of the IRC. The letter did not indicate the nature of the Yoga Society of Pennsylvania's tax-exempt status, and did not indicate that the exemption applied to any subordinate units of

the Yoga Society of Pennsylvania. The petitioner also submitted a copy of an amendment to articles of incorporation reflecting a change of name from the Yoga Society of Pennsylvania to the Kripalu Yoga Fellowship; a copy of an August 31, 1981 letter from the Massachusetts Assistant Attorney General, Division of Public Charities Public Protection Bureau, to the Kripalu Yoga Fellowship at Summit Station, Pennsylvania, stating that the bureau recognized the organization as a religious organization; and a copy of a 1981 letter from the town of Stockbridge, Massachusetts, to the Kripalu Center for Holistic Health in Summit Station, Pennsylvania, stating that, as the Division of the Public Charities had determined that the organization was a public charity "whose dominant purpose is religious," that upon finalization of its purchase of real estate in Stockbridge, the organization would be granted exemption from real estate taxes. The petitioner also submitted a copy of a 1984 Form 3 ABC from the Massachusetts Department of Revenue Return of Property Held for Charitable and Other Purposes, on which the petitioner indicated that its purpose was religious, and a copy of a 1999 amendment to articles of incorporation for the Kripalu Yoga Fellowship, indicating that the purpose of the organization is among, other things, to [a]dvance the physical, mental and spiritual well-being of the general public by promoting the science, philosophy and theology of yoga."

The burden of proof is on the petitioner to establish that its classification under section 509(a)(2) derives primarily from its religious character. Because the IRS determination letter cannot, by itself, establish that the entity is a religious organization, that determination letter cannot satisfy 8 C.F.R. § 204.5(m)(3)(i)(A). The other option, at that point, is to comply with 8 C.F.R. § 204.5(m)(3)(i)(B) by submitting the documentation that the IRS would require to determine that the entity is a religious organization.

The organization can establish this by submitting documentation that establishes the religious nature and purpose of the organization, such as brochures or other literature describing the religious purpose and nature of the activities of the organization. The necessary documentation is described in a memorandum from William R. Yates, Associate Director of Operation for CIS, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003):

- (1) A properly completed IRS Form 1023,
- (2) A properly completed Schedule A supplement, if applicable,
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization, and
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The above list is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B), cited above. The memorandum specifically states that the above materials are, collectively, the "minimum" documentation that can establish "the religious nature and purpose of the organization." Thus, for example, a petitioner cannot meet this burden by submitting only its articles of incorporation. Also, obviously, it is not enough merely for the petitioner to *submit* the documents listed above. The *content* of those documents must establish the religious purpose of the organization.

On motion, the petitioner submits a complete copy of the articles of incorporation for the Kripalu Yoga Fellowship and a copy of a 1984 letter from the Division of Employment Security, informing the Kripalu Yoga Fellowship that it was excluded from the term "employment" under Massachusetts law because its services were performed "in the employ of a church . . . or an organization which is operated primarily for religious purposes." The copy of the articles of incorporation does not include a dissolution clause.

The petitioner also submitted a letter from the general counsel of Kripalu Yoga Fellowship, who states that the petitioner is a "doing business as" name of the Kripalu Yoga Fellowship in Stockbridge, and that the two organizations are one and the same. Nonetheless, the petitioner has not submitted evidence in accordance with the regulation to establish that the Kripalu Yoga Fellowship is tax-exempt as a bona fide nonprofit religious organization. The petitioner's articles of incorporation do not include a dissolution clause and the petitioner failed to submit a copy of an IRS Form 1023, together with its supporting documentation.

Additionally, although the petitioner's general counsel states, for the first time on motion, that the petitioner is a "doing business as" name for the Kripalu Yoga Fellowship, the petitioner submitted no evidence to corroborate this statement. 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 evidence indicates that the Kripalu Yoga Fellowship is located in Lenox, Massachusetts and operates at least one other organization there. In its letter of March 8, 2002 and in other documentation, the petitioner stated that it is "operated" by the Kripalu Yoga Fellowship. The petitioner submitted no evidence that it was covered under a group tax exemption granted to the Kripalu Yoga Fellowship.

The evidence submitted is insufficient to establish that the petitioner is a bona fide nonprofit religious organization as required by the statute and regulation.

The second issue on motion is whether the petitioner established that the beneficiary was engaged continuously in a qualifying religious occupation for two full years immediately preceding the filing of the visa petition.

The proffered position is that of "Director of Kripalu Yoga Teacher Training." The petition was filed on March 15, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as director of Kripalu Yoga teacher training throughout the two-year period immediately preceding that date.

In her letter of March 7, 2003, [REDACTED] stated that the proffered position "was created in 1999 when [the beneficiary] was a vowed member of the KYF [Kripalu Yoga Fellowship] religious order. At the time he left the order, [the beneficiary] was in the position of Kripalu Yoga Teacher Training (KYTT) Assistant Director and was given the status of employee."

In a separate letter of the same date, [REDACTED] stated:

[The beneficiary] is currently serving as an instructor of the religious teachings of Kripalu Yoga. We have offered [him] the full-time, permanent position of Director of Kripalu Yoga Teacher Training, with responsibility for instructing teacher training course and curriculum in the techniques, spiritual teachings and methodologies of Kripalu Yoga.

The AAO noted in its previous decision that the petitioner had filed a previous petition on February 21, 2000 on behalf of the beneficiary's wife for the same position. The petitioner stated that no one else had held this position since it was created; however, in response to the director's request for evidence (RFE) dated December 22, 2002, counsel stated that the position was held by the beneficiary's wife until the petitioner withdrew its sponsorship when she left the organization.¹

¹ The record does not establish when the petitioner withdrew its petition on behalf of the beneficiary's ex-wife.

On motion, Diana Damelio, the petitioner's curriculum dean, stated that the perceived inconsistency is the result of the terminology used to denote teaching and administrative positions:

This has happened because the administrative head of any area has had the title of "Director" and uniquely qualified program presenters or teacher trainers were also called "Directors". For example, the administrative head of Kripalu Yoga teacher Training was called the Director of Kripalu Yoga Teacher Training and an actual teacher trainer for the program itself was called a Director of Kripalu Yoga Teacher Training.

So, in February 2000 [the beneficiary's wife] was indeed called the Director of Kripalu Yoga Teacher training. She was the administrative head of the program and I assumed this position when she left Kripalu Center. At that time [the beneficiary] was one of a small number of uniquely qualified individuals who were Kripalu Yoga Teacher Trainers who also happened to have the title of Director of Kripalu Teacher training.

Nevertheless, the petitioner's explanation, presented for the first time on motion and unsupported by any documentary evidence, is not persuasive and conflicts with other evidence in the record. Specifically, the petitioner stated that the position was created for the beneficiary in 1999 and a copy of a job description lists the beneficiary's title as "Program Designer/Director Basic Yoga Teacher Training (KYTT) Director," who reports to the Director of Kripalu Teacher Development. The record also contains a copy of another job description for an "Advanced YTT (AYTT) Program Designer/Director Basic Yoga Teacher Training (YTT) Director and Karma Yoga Teacher," who reports to the vice president of programs and the director of Karma Yoga. These position descriptions indicate that the nature of the beneficiary's job is unique, despite the vague description of "director basic Yoga teacher training" used throughout the documentation submitted by the petitioner. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The evidence does not establish that the beneficiary was continuously employed as director of teacher training throughout the two-year period immediately preceding 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 decisions of the director and the previous decision of the AAO will be affirmed. The petition is denied.

ORDER: The petition is denied.