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U.S. Citizenship
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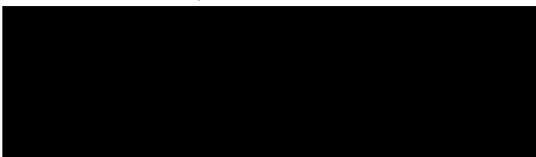


FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **FEB 24 2005**
SRC 02 207 50064

IN RE: Petitioner: [REDACTED]
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:



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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a Hindu 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 *shastri*. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a *shastri* immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that it had offered a qualifying position 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 October 1, 2008, 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 October 1, 2008, 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 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 regulation at 8 C.F.R. § 204.5(m)(1) indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on June 21, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a *shastri* throughout the two years immediately prior to that date.

██████████ secretary/treasurer of the petitioning organization, states that the beneficiary is "a monk [who] has taken a vow of poverty and receives no compensation, although food, clothing and shelter are provided on a voluntary basis from individuals participating in temple activities." ██████████ adds that "the temple has no salaried or non-salaried employees."

The beneficiary arrived in the United States on August 29, 2001, and therefore spent much of the qualifying period outside of the United States. To establish the beneficiary's prior work, the petitioner has submitted a letter from an official of a temple in India, indicating that the beneficiary "is the Spiritual head (Bishop) and Chief Priest of our religious organization." The date is not fully legible on the photocopied letter.

The director denied the petition, in part because the petitioner had not provided sufficient information about the beneficiary's past work and the terms thereof. The director cited a lack of evidence to show that the beneficiary had received material support from the petitioner, or that the beneficiary had worked continuously throughout the two-year period immediately prior to the petition's filing date.

On appeal, counsel states the regulatory language requiring continuous experience throughout the two-year period immediately preceding the filing of the petition is "an unreasonable limitation" not justified by the statutory language. The regulations have the force of law in this matter, and the petitioner must meet the requirements in those regulations. The AAO has no authority either to overturn the regulations, or to declare that those regulations can or should be disregarded, and therefore it would be fruitless to debate, here, the merits of the regulations as they now stand, or those of counsel's arguments against those regulations.

Counsel states that, notwithstanding the alleged flaws in the regulations, the beneficiary "has been continuously performing a religious vocation for far in excess of the two years prior to . . . filing the petition." Counsel asserts "[t]here has been no break in the continuity" of the beneficiary's religious work.

█ in a sworn affidavit, asserts "I have personally known and been a disciple of [the beneficiary] since 1994 and that during this time he has performed the duties [of] a Guru or spiritual master in the Hindu religion continuously on a full-time basis." Ms. █ does not provide any details about the beneficiary's past work outside the United States, or establish that, throughout the two-year qualifying period, she has been in a position to attest to the beneficiary's continuous religious work.

The petitioner submits copies of promotional fliers for various temple events, but these fliers do not establish continuous activity throughout the qualifying period. At best, the fliers document the beneficiary's frequent visits to Texas between other international trips (as documented by multiple exit and entry stamps in the beneficiary's passport, reproduced in the record). Stamps in the beneficiary's passport show that the beneficiary was in the United States from July 28 to December 3, 2000; from December 25, 2000 to January 8, 2001; and from August 29, 2001 onward. Thus, the beneficiary appears to have been outside the United States for an aggregate of roughly ten months of the 2000-2002 qualifying period, his longest absence being from January to August of 2001 (stamps show he entered at Delhi on January 9 and departed from Ahmedabad on August 21, returning to the United States with an intermediate stop in London). Unless the beneficiary was performing essentially the same work in India that he has been performing in the United States, this significant absence represents a substantial interruption in the continuity of the beneficiary's work. The burden is not on the AAO or the director to prove that the beneficiary's international travel interrupted his work. Rather, the burden is on the petitioner to show that the beneficiary was, in fact, performing essentially the same work throughout the qualifying period. Given the beneficiary's frequent travel, the assertions of a single witness cannot meet this burden, particularly when that witness has never claimed to have traveled with the beneficiary and thus been in a position to observe the beneficiary's activities.

The petitioner has submitted copies of itineraries, but these documents do not cover the entire qualifying period, nor do they demonstrate that the beneficiary actually followed this itinerary or performed full-time continuous religious work during the stops described therein. Some of these documents account for only one and a half to two hours of a given day.

The materials presented by the petitioner demonstrate the petitioner's involvement in religious activities of some kind, but the large gaps in the record, and the relative dearth of corroboration regarding the beneficiary's overseas activities, prevent us from finding that the petitioner has met its burden of proof. We affirm the director's finding that the petitioner has not established the beneficiary's *continuous* religious work throughout the 2000-2002 qualifying period.

The other issue cited by the director is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

Professional capacity means an activity in a religious vocation or occupation for which the minimum of a United States baccalaureate degree or a foreign equivalent degree is required.

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

8 C.F.R. § 204.5(m)(3)(ii) states, in pertinent part, that the petitioner must establish:

(B) That, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested; or

(C) That, if the alien is a religious professional, he or she has at least a United States baccalaureate or its foreign equivalent required for entry into the religious profession. In all professional cases, an official academic record showing that the alien has the required degree must be submitted; or

(D) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother, or that the type of work to be done relates to a traditional religious function.

Thus, the petitioner must first establish that the position offered qualifies as that of a minister, a religious vocation, or a religious occupation; and then the petitioner must show that the beneficiary is qualified for such a position.

Saroj Patel states that the position offered to the beneficiary "is similar in nature to that of a Bishop in Christian religions and his duties include conducting spiritual classes and guidance, leading religious services . . . and administering religious rites." A separate, unsigned job description lists five functions of a *shastri*:

1. Direct daily activities of the [petitioning] organization.
2. Provide spiritual guidance to the devotees.
3. Serve as the spiritual Guru regarding religious matters.
4. Coordinate activities with other temples and devotees to set up religious programs.
5. Deliver discourses and talks regarding the Hindu scriptures – Veda, Bhagwat Gita, and Bhagwatam.

Fundraising is not a qualifying religious occupation, per 8 C.F.R. § 204.5(m)(2), and 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary will not depend on solicitation of funds for support. The director determined "[i]t is not clear . . . that [the beneficiary's] activities are not wholly or partly dependent on the solicitation of funds or fundraising." It is not clear what led the director to believe that the beneficiary's activities involve a significant amount of fundraising.

The director determined that the beneficiary's position was not ministerial, because there is no evidence of ordination or comparable authorization to perform religious rites; not a vocation, because there is no evidence of vows; and not a religious occupation because the petitioner had not shown "specific prerequisites and preconditions" for the position. On appeal, counsel argues that the beneficiary has "taken 'deeksha' and 'samnyasa' (the Hindu equivalent of ordination), from his Guru, [REDACTED] and is carrying on his calling as a Guru and the spiritual leader of [the petitioning] Organization."

[REDACTED] associate professor of Religious Studies at Rice University, states that, having reviewed the beneficiary's credentials, he can aver that the beneficiary's "religious status within Hinduism is actually much higher than that of a Catholic priest within Roman Catholicism," and that the beneficiary "is indeed a genuine religious leader, comparable to a bishop in Catholic terms again." Prof. [REDACTED] cautions that these analogies are approximate, because Hinduism and Christianity have very different histories and "modes of leadership [and] religious authority."

Prof. [REDACTED] describes the beneficiary as holding a leadership position that appears to relate most closely to that of a minister. This letter, however, appears to rely on second-hand or hearsay information. The record does not provide first-hand confirmation of the beneficiary's vows, *deeksha* or *samnyasa*. Therefore, if what Prof. [REDACTED] states is true, then the beneficiary qualifies as a minister for immigration purposes, but the record offers no reason to believe that Prof. [REDACTED] has first-hand knowledge of these details of the beneficiary's career. The remaining deficiency, thus, lies not in the description of the beneficiary's position, but in the evidentiary support underlying that description. The regulation at 8 C.F.R. § 103.2(b)(2)(i) states:

The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must

demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

Here, the petitioner has provided a credible description of a qualifying ministerial position, but the petitioner has not provided satisfactory evidence that the beneficiary possesses the necessary qualifications for the position.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.