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U.S. Citizenship  
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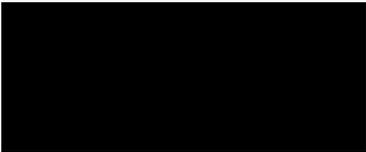
Office: VERMONT SERVICE CENTER

Date: MAR 17 2005

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.

*Mari Johnson*

& Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Sikh 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 granthi. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as an assistant granthi immediately preceding the filing date of the petition.

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 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 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 January 11, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an assistant granthi throughout the two years immediately prior to that date, the period from January 11, 2000 through January 11, 2002.

In an unsigned letter dated October 18, 2001, which accompanied the initial filing, the petitioning temple states that the beneficiary "has been performing without compensation for us from July 15, 2001 to the present as a Sikh religious worker." The petitioner further states that in the future, the beneficiary "will be paid \$280 per week for these services. In addition we will provide him with free boarding and lodging."

The record contains numerous letters from other temples which indicate that as a member of the Ragi Jatha, the beneficiary sporadically "conducted religious services, participated in our congregations, preached and sang hymns" at different temples from November 2000 through July 2001.

On September 20, 2002, the director requested evidence of the beneficiary's employment and work schedule during the two-year qualifying period. The director further requested evidence of how the beneficiary supported himself if his "past experience was gained on a volunteer basis."

In response, counsel provided descriptions of the positions of granthi (priest) and assistant granthi. Counsel described the duties of the granthi as:

[Placing] the [redacted] on the "dias" [floor] in the congregation room every morning to read out the morning prayers and late in the evening to read out the evening prayers. The prayers are read aloud in Punjabi. During the prayers, the Granthi makes offerings, "prasad", to God in the forms of fruits, or dried fruits to be blessed. The "prasad" is then offered to the congregation. Once the reading of the evening prayers are finished, the Granthi places the [redacted] at its resting place in a separate room for the night.

Counsel then described the duties as an assistant granthi:

Being the assistant Granthi, [the beneficiary] rises at 3:30 – 4:00 am and after personal prayers, he accompanies the readings from the [redacted] for 4 hours on tabla...there is a break and reading resumes for another 2 hours until there is a lunch break . . . reading of the holy book resumes from 2-3 where particular verses are read...From 3:00 – 6:00 there is a time for members of the congregation to speak about personal matters and seek spiritual guidance from [redacted]

We first note that although the record contains several certificates of appreciation and a certificate that the beneficiary "completed the study of gurbani, sikh history and preaching it," there is no evidence to establish what is required to become a granthi or an assistant granthi, such as ordainment, or that the beneficiary has met such requirements. Counsel's assertion that the beneficiary is "a member of the [redacted] [redacted] does not suffice as evidence that the beneficiary met the requirements to be an assistant granthi.

Further, although counsel claimed that the beneficiary is performing the duties of an assistant granthi, the evidence in the record provided by the petitioner reflects that the petitioner is not an assistant granthi, but a member of the Ragi Jatha. The record contains no evidence that one must be an assistant granthi to be a member of the Ragi Jatha or that the duties required of members of the Ragi Jatha are comparable to the duties of an assistant granthi. The regulations at 8 C.F.R. § 204.5(m)(1) and (3)(ii)(A) require that the beneficiary must have carried on *the* vocation or occupation, rather than *a* vocation or occupation, indicating that the work performed during the qualifying period should be substantially similar to the intended future religious work. The underlying statute, at section 101(a)(27)(C)(iii), requires that the alien "has been carrying

on such . . . work” throughout the qualifying period. An alien who seeks to work as an assistant granthi has not been carrying on “such work” if employed in a position other than an assistant granthi for the preceding two years.

In response to the director’s request for evidence, the petitioner submitted a list of the beneficiary’s work experience. This list contradicts the letter previously submitted by the petitioner. Specifically, the petitioner’s original letter indicates that the beneficiary began employment on July 15, 2001, while the employment list indicates that the beneficiary did not begin working until November 2001. Doubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho.*

The director denied the petition based on the finding that there was no evidence the beneficiary had been a full-time religious worker for the two-year period preceding the filing of the petition.

On appeal, counsel asserts that “the law is very clear with regard to who qualifies as a special immigrant religious worker” and that the fundamental requirement is only that “the religious worker must have ‘at least two years immediately preceding the time of application for admission, [have] been a member of a religious denomination.’” Counsel then states, “the issue is not whether the beneficiary [sic] obtained the requisite two years experience during his time with the [sic] petitioner.”

We are not persuaded by counsel’s argument. While it is true that the beneficiary must have been a member of the petitioner’s religious denomination during the qualifying period, the law also requires the beneficiary to have been “carrying on such vocation, professional work, or other work continuously for at least the 2-year period.” See section 101(a)(27)(C)(iii) of the Act. Contrary to counsel’s assertion, the sole issue in this instance *is* whether the beneficiary had the requisite experience in the two-year period prior to filing.

The petitioner has failed to show that during the requisite period the beneficiary was continuously working in the same position as the position offered by the petitioner. As noted previously, while the beneficiary’s qualifying period began on January 11, 2000, the record reflects that not only has the beneficiary’s employment prior to November 2001 (when he began with the petitioner) been sporadic, but the beneficiary appears to have been working in a different position than the position being offered by the petitioner.

Further, on appeal, both counsel and the petitioner continue to acknowledge the fact that the beneficiary has been “performing the services of assistant Granthi (priest) . . . on a voluntary basis without any compensation.”

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of “a number of safeguards . . . to prevent abuse.” See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Com. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Com 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who, in accordance with their vocation, live in a clearly unsalaried environment; the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and salaried. To hold otherwise would be contrary to the intent of Congress.

In this instance, the petitioner indicates its intent to pay the beneficiary a salary in the future. As such, the beneficiary's situation is not comparable to that of a Catholic priest or nun who lives in an unsalaried environment. Although there may be other limited circumstances in which unpaid volunteer work may constitute qualifying experience, the burden of proof remains on the petitioner to establish that the claimed work took place continuously. Such continuous work has not been shown here.

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.