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U.S. Citizenship
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CA

MAY 20 2005

FILE: [REDACTED]
WAC 03 263 50428

Office: CALIFORNIA SERVICE CENTER Date:

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:

[REDACTED]

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.

Robert P. Wiemann

Robert P. Wiemann, Director
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 on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a Buddhist 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). The petitioner has specified no job title for the beneficiary's position. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that the proffered position qualifies as a religious occupation, or that the beneficiary possesses the necessary qualifications for the position.

On appeal, the petitioner submits copies of previously submitted documents and arguments from counsel.

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 first issue concerns the beneficiary's past experience. 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 experience in the religious vocation, professional religious work, or other religious work. The petition was filed on September 19, 2003. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of the proffered position throughout the two years immediately prior to that date.

Hui Kuang Huang, abbess of the petitioning temple, states that the beneficiary "has worked as a full-time religious worker in our temple from July 2001 to present. . . . We will provide him with room, board and

compensate him \$1,000 a month for services rendered to our temple.” The petitioner’s initial submission includes a copy of a Form W-2 Wage and Tax Statement that the petitioner furnished to the beneficiary, showing that the petitioner paid the beneficiary \$13,604.76 in 2002.

The director instructed the petitioner to document the beneficiary’s work history during the two-year qualifying period. In response, the petitioner repeats the assertion that the beneficiary has worked for the petitioner throughout the qualifying period. Abbess Huang asserts that the beneficiary is the only “employee currently receiving compensation.”

The petitioner submits another copy of the beneficiary’s 2002 Form W-2, and a copy of another Form W-2, indicating that the petitioner paid the beneficiary \$2,436.39 in 2001. The petitioner submits copies of canceled checks, showing that the petitioner paid the beneficiary \$750 per month from October through December of 2001 and \$1,000 a month from January 2002 to September 2003 (the May 2003 check is missing, and the beneficiary received one check for \$3,000 to cover February, March and April of 2002).

The director’s denial notice included the following table:

<u>Date</u>	<u>Check Number</u>	<u>Amount of Payment</u>
8/01/01	4828	\$1,000.00
9/01/01	Missing	
10/01/01	4539	\$750.00
11/01/01	4555	\$750.00
12/01/01	4580	\$750.00

The director then stated: “The petitioner allegedly paid the beneficiary \$1,000.00 in August of 2001 and reduce[d] the beneficiary’s wage to \$750.00 from October to December 2001. This is not reflective of a full time wage. It is also duly noted that the alleged check paid to the beneficiary in August 2001 is out of numerical sequence.” The director concluded that these inconsistencies compromised the credibility of the petitioner’s claims. On appeal, counsel maintains that the beneficiary worked as claimed throughout the qualifying period.

The record does not support the director’s interpretation. The copies in the record show the following sequence of checks, all for \$1,000.00:

<u>Date</u>	<u>Number</u>
6/1/2002	4763
7/1/2002	4790
8/1/2001	4828
9/1/2002	4860
10/12/2002	4896

Also, the checks are in chronological order, except that the “8/1/2001” check is reproduced on the same page as the 6/1/2002 and 7/1/2002 checks. It appears that the petitioner actually issued check number 4828 in August of 2002, and simply misdated the check. Once we make this assumption,¹ there is no discrepancy in

¹ Counsel, on appeal, offers a hypothetical alternative explanation involving a lost checkbook. Counsel offers no corroboration (such as a statement from the person alleged to have lost the checkbook), and this proposed explanation actually raises more questions than it answers. For instance, if counsel’s hypothesis were correct, we would be forced to

the succession of check numbers and no indication of a reduction in the beneficiary's salary. Rather, the evidence shows an increase from \$750 to \$1,000 in January 2002.

If the petitioner had issued check 4828 in 2001, then the Form W-2 for 2001 would be inaccurate. Without this check, however, the \$2,436.39 reported on that form is consistent with three \$750.00 checks plus \$186.39 in withheld taxes. As noted above, the record contains three \$750.00 checks dated 2001. The beneficiary's Forms W-2 for 2002 and 2003 are both consistent with \$1,000.00 per month after withholding of taxes.

The paychecks are generally dated on the first of the month. Because workers are not typically compensated in advance, it is reasonable to conclude that the October 1, 2001 paycheck compensated work the beneficiary performed the previous month, September 2001, which was also the first month of the qualifying period. Following this reasonable interpretation of the evidence, the petitioner has, therefore, documented payments to the beneficiary for every month of the qualifying period. Notwithstanding the absence of the May 2003 check from the record (for which the 2003 Form W-2 appears to compensate), the preponderance of the evidence favors the conclusion that the petitioner has paid the beneficiary more or less regularly, which is consistent with continuous employment. The director's concerns about credibility, therefore, dissipate upon close examination of the evidence that was available to the director at the time of the denial. We find that the petitioner has credibly documented the beneficiary's continuous employment during the 2001-2003 qualifying period.

The next issue is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) defines "religious occupation" as 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.

Citizenship and Immigration Services therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

Abess Huang states:

[The beneficiary's] job duties are: propagate Buddhism; prepare for Buddhist religious worship, wedding and funeral services; assist nuns and monks in performing spiritual functions associated with Buddhist beliefs and practices; provide religious counseling and spiritual assistance to Buddhist temple devotees; receive guest[s] and respond to all requests and inquiries pertaining to Buddhism; and visit the sick and the poor.

The director instructed the petitioner to "explain how the duties of the position relate to a traditional religious function." In response, the petitioner has submitted information from the Department of Labor's *Dictionary of Occupational Titles* relating to the job description of a "Pastoral Assistant," the implication being that the

conclude that the 2001 Form W-2 is inaccurate, thereby casting further doubt on the petitioner's credibility. For various reasons, counsel's attempted explanation would not be conducive to the approval of the petition.

beneficiary fulfills comparable duties. The descriptions do appear to share several basic common elements, such as assisting with weddings and funerals and offering guidance or counseling.

The director, in denying the petition, stated: "the petitioner has submitted insufficient evidence to show how the beneficiary's position and qualifications are analogous to that of a pastoral assistant in its denomination. . . . Therefore, the petitioner has not established that the duties of the beneficiary's prospective occupation relate to a traditional religious function." On appeal, counsel repeats the petitioner's prior assertion that the position offered to the beneficiary is comparable to that of a pastoral assistant. The petitioner had provided a job description that matched key aspects of the definition of a pastoral assistant. The director, in the notice of decision, did not explain why the description was inadequate. Upon consideration of the record, we are persuaded that the beneficiary's position, as described, qualifies as a religious occupation relating to traditional religious functions.

Relating to the issue of the beneficiary's occupation is the issue of qualifications. 8 C.F.R. § 204.5(m)(3)(ii)(D) requires the petitioner to demonstrate that the beneficiary is qualified in the religious vocation or occupation. Abbess Huang, in her initial letter, indicates that the beneficiary "obtained his Triple Gem Ordination at our temple on March 12, 1996." Subsequently, the director requested information regarding "the minimum education, training, and experience necessary to do the job." In response, the petitioner has cited information from the *Dictionary of Occupational Titles*, indicating that a pastoral assistant requires between one and two years of "Specific Vocational Preparation." The petitioner has also submitted a copy of the ordination certificate from 1996.

The director concluded: "The petitioner has not provided any information regarding the requirements for the position in its denomination or provided any evidence to demonstrate how the beneficiary has satisfied such requirements." The record, as a whole, suggests that the petitioner at least implied that the "Triple Gem Ordination" is the requirement for the position, and the petitioner has indeed documented that the beneficiary possesses this credential. While the petitioner could have been clearer in its discussion of the position and its requirements, we find no disqualifying omissions in the record.

The director's decision appears to rely largely on inferences drawn from the least favorable possible reading of the evidence. Upon consideration, we conclude that a fair reading of the available evidence supports a finding that the preponderance of that evidence supports the approval of the petition.

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 met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The petition is approved.