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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

[Redacted]

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FILE: [Redacted] SRC.05 021 52628

Office: TEXAS SERVICE CENTER

Date: 07 20 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:

[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.

Maui Johnson

S Robert P. Wiemann, Director
Administrative Appeals Office

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

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), to perform services as a minister. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition, that the position qualifies as that of a religious worker, or that it has the ability to pay the proffered wage.

On appeal, the petitioner submits additional documentation.

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 presented on appeal is whether the petitioner established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States.” The regulation 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.”

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) 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 October 29, 2004. Therefore, the petitioner must establish that the beneficiary was continuously working in the religious occupation throughout the two-year period immediately preceding that date.

In an undated letter, the petitioner’s vice president [REDACTED] stated that the beneficiary has been working for the petitioning organization as a Buddhist minister since November 1, 2004. In a March 31, 2005, [REDACTED] stated:

We are [sic] appointed [the beneficiary] as said position from November 1st as full time of [sic] basis and offering various duties inside our organization such as[] coordinating Buddhist monks and Buddhist teacher[s] at our organization; coordinate different religious organization[s] and slowly participate [sic] donation campaign[s] through out the country; to provide detail concept of Buddhist principle through publication[s] and speeches out side the country; to maintain relationship with various Monks and introduce Buddhist principle; to introduce and research the birth place of lord Buddha with affiliation of Nepalese Buddhist Monastery in Nepal; take day to day responsibility of [the petitioning organization].

In a letter dated April 2, 2005, the beneficiary stated that he is a Buddhist minister from Nepal, and that from October 2002 to 2004, he worked “on research and distributing books in various communit[ies] including Buddhist people.”

The petitioner submitted a July 15, 2002 letter from [REDACTED] a section leader with the Ministry of Local Development Monastery Management and Development Committee in [REDACTED] stated that the beneficiary “is currently in the United States for the purpose of teaching Buddhist Principles and make relations with Buddhist people. He will be visiting Buddhist monasteries in the United States.” The letter also indicated that the monastery “had accepted” the beneficiary’s expenses for three years, and that “we are agreed to provide \$25,000 per month and other expenses.”

Also submitted were copies of the beneficiary’s Forms 1040, U.S. Individual Income Tax Returns, for the years 2003 and 2004. The year 2003 Form 1040 reflects wages of \$4,800, and the beneficiary lists his occupation as minister. The year 2004 Form 1040 reflects wages of \$3,360 and self-employment income of \$4,200. The petitioner also submitted copies of four checks that it made payable to the beneficiary in November and December 2004. The checks reflect total payments of \$2,400 in November and \$1,800 in December. The

petitioner submitted no evidence any support received by the beneficiary from Monastery Management and Development Committee in Nepal.

The petitioner submitted no corroborative evidence of any work performed by the beneficiary during 2002. 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)).

Further, the record does not establish that the beneficiary worked as a minister during the two years immediately preceding the filing of the visa petition. A September 3, 1998 letter from the Nepalese Ministry of Local Development indicates that the beneficiary was appointed as a member secretary of the Management and Development Committee formation order. A letter from the Monastery Management and Development Committee indicates that the beneficiary was "applying active and appropriate measures in order to boost the Bouddha [sic] Religion and Manage Monastery in a proper way." As noted above, the June 15, 2002 letter from [REDACTED] indicated that the beneficiary was visiting the United States "for the purpose of teaching Buddhist Principles and make relations with Buddhist people." Although the beneficiary, in his letter of April 2, 2005, stated that he was a Buddhist minister, nothing in the record reflects that the beneficiary was serving in that capacity at any time prior to the filing of the visa petition. According to the beneficiary, from October 2002 to 2004, he "work[ed] on research and distributing books in various community [sic] including Buddhist people."

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/she 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 not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

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).

The regulation at 8 C.F.R. § 204.5(m)(2) defines minister as:

[A]n 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.

The evidence submitted does not establish that the position with the Ministry of Local Development Monastery Management and Development Committee involved conducting religious worship or performing any other kind of clerical duties and therefore does not establish that the beneficiary worked as a Buddhist minister for that organization. Additionally, the evidence does not establish that the beneficiary worked in the same religious occupation or vocation as that for which he seeks entry into the United States.

Accordingly, the record does not establish that the beneficiary worked in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition.

The second issue is whether the petitioner established that the position qualifies as that of a religious worker.

According to the regulation at 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work as a religious worker. To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Citizenship and Immigration Services (CIS) 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.

As discussed above, the petitioner stated that the duties of the proffered position will include coordinating the monks and teachers at the petitioning organization, coordinating different religious organizations, participating in donation campaigns, publications and speeches, researching and taking day-to-day responsibility of the petitioning organization. Although the petitioner describes the position as that of a Buddhist minister, the evidence does not establish that the position meets the regulatory definition of minister as defined by the regulation. *See* 8 C.F.R. § 204.5(m)(2). The petitioner does not allege that the duties of the position will involve conducting religious worship or any other duties traditionally performed by members of its clergy.

Further, the petitioner submitted no evidence that the position as described is defined and recognized the governing body of its denomination, or that the position is traditionally a permanent, full-time, salaried occupation within the denomination. The petitioner provides no evidence that the position existed within its organization prior to the beneficiary assuming the position, and submitted no evidence that the position is full-time or carries with it a specific salary.

Accordingly, the record does not establish that the position is a religious vocation or occupation within the meaning of the statute and regulation.

The third issue on appeal is whether the petitioner established that it had the ability to pay the proffered wage.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

In an undated letter submitted in response to the director's request for evidence (RFE) dated March 26, 2005, the petitioner stated, "As his employment with us, we are not paying him as [sic] Salary basis because most of our income depends on Donation paid by the public." As discussed above, the petitioner submitted copies of checks that it paid to the beneficiary in November and December 2004 totaling \$4,200. The petitioner also submitted copies of checks reflecting that it paid the beneficiary \$900 twice a month in January and March through May 2005, and once in February 2005. The petitioner did not allege and submitted no evidence that it compensated the beneficiary in other than monetary terms.

As the petitioner has not set a specific compensation for this position, the evidence does not establish that it has met this regulatory criterion. The petitioner indicates the compensation is dependent upon the donations received by the petitioning organization. The above-cited regulation states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of primary evidence.

Accordingly, the petitioner has not demonstrated that it has the continuing ability to pay the beneficiary the proffered wage.

Beyond the decision of the director, the petitioner has not established that it has extended a qualifying job offer to the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

As discussed above, the petitioner stated that it has not set a specific salary for the position, and that compensation is dependent upon donations received by the organization. The petitioner does not indicate that it provides any in-kind compensation to the beneficiary. The record does not establish that the beneficiary will not be solely dependent upon supplemental employment or the solicitation of funds for his support.

The evidence does not establish that the petitioner has extended a qualifying job offer to the beneficiary. This deficiency constitutes an additional ground for denial of the petition.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO 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 Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

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 appeal will be dismissed.

ORDER: The appeal is dismissed.