

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

CA

FILE:

WAC 03 062 56078

Office: CALIFORNIA SERVICE CENTER

Date: DEC 13 2006

IN RE:

Petitioner:

Beneficiary:

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.

Maureen Johnson

5 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The AAO subsequently reopened the proceeding on the petitioner's motion, withdrew its prior decision, and remanded the matter to the director for further action and consideration. The director has again denied the petition and, pursuant to the AAO's instructions, certified the decision to the AAO for review. The AAO will affirm the director's decision.

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 religious instructor. In the latest decision, the director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a religious instructor immediately preceding the filing date of the petition. The director also determined that a prior investigation had seriously compromised the petitioner's credibility.

In certifying the decision to the AAO on May 11, 2006, the director allowed the petitioner 30 days in which to supplement the record. To date, over three months later, the record contains no further correspondence from the petitioner, and therefore the AAO considers the record to be complete, and will render its decision based on the record as it now stands.

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 experience in the religious vocation, professional religious work, or other religious work. The petition was filed on December 16, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a religious instructor throughout the two years immediately prior to that date.

The director, in the latest decision, states:

[The] record shows that the beneficiary was paid wages in year 2000 in the amount of \$5,000.00. In year 2001 total of \$12,000.00, in year 2002 also \$12,000.00. Those amounts do not indicate that the beneficiary was employed full time in a religious professional capacity.

In view of the above, the evidence submitted is insufficient to establish that the beneficiary has been performing full-time work for a two-year period immediately preceding the filing of the petition.

The director does not contest the authenticity of the documents establishing these payments to the beneficiary; the director appears, simply, to dispute that \$12,000 is unrealistically low for a year of full-time employment. The petitioner had indicated, however, that the beneficiary “will be paid \$1,000.00 per month.” Documentation indicating that the petitioner has paid the beneficiary the offered rate is not *prima facie* evidence that the beneficiary did not work as claimed.

Also, investigative documents indicate that “it appears [the beneficiary] is receiving free room and board” at the petitioning temple. This would explain why the beneficiary has listed the petitioner’s address as his own on tax returns. Room and board would supplement the reported cash wage, in which case \$1,000 per month plus room and board appears to be a plausible, if austere, rate of compensation.

The director also stated that the record does not establish that the beneficiary holds a U.S. baccalaureate degree or a foreign equivalent degree, and that therefore the beneficiary cannot be considered to be a professional under 8 C.F.R. § 204.5(m)(2). This has no evident relevance to a fundamental finding of eligibility, however, as non-professional religious workers can also qualify for benefits under the same section of law.

The remaining issue relates to the credibility of claims by the petitioner and the beneficiary. Section 204(b) of the Act, 8 U.S.C. § 1154(b), provides for the approval of immigrant petitions only upon a determination that “the facts stated in the petition are true.” False, contradictory, or unverifiable claims inherently prevent a finding that the petitioner’s claims are true. *See also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 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. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988). 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. *Id.* at 582, 592.

There follows an excerpt from the AAO's remand order of September 14, 2005:

As part of the present petition, on September 18, 2003, the petitioner submitted a summary of the beneficiary's "Employment History." This document indicates that the beneficiary worked as a "Buddhist Monk" at "Kooksung Temple, Seoul, Korea," from March 1989 to July 1996. This is consistent with prior claims regarding the beneficiary's past experience.

Several years earlier, on April 3, 1997, the same petitioner, represented by the same law firm that filed the present motion, filed an earlier petition (receipt number WAC-97-127-52197) on behalf of the same beneficiary. In support of the 1997 petition, the petitioner submitted a copy of the beneficiary's ordination certificate, purportedly signed by [REDACTED] "Executive Chief of the Korean Buddhist." The certificate indicates that the beneficiary was ordained as a monk on October 10, 1988, at "Yongju Temple," and that the beneficiary's "Ordination Teacher" was "Cheong Ha." The petitioner also submitted a copy of a "Certificate of Experience," purportedly signed by [REDACTED] identified as head priest of Kooksung Temple, located at [REDACTED] ku, Seoul, Korea. The "Certificate of Experience" indicates that the beneficiary had been a "Buddhist Monk" at Kooksung Temple from March 1989 to the "present," i.e., March 10, 1997. . . .

[On] Form G-325A, Biographic Information, . . . [t]he beneficiary stated . . . that he had worked as a "Buddhist Monk" at "Kooksung Temple" since March 1989. The beneficiary identified no other former employers. Although Form G-325A instructs applicants to provide the full address of employers, the beneficiary did not do so, stating only that Kooksung Temple was in Seoul.

Further investigation revealed that there is a Buddhist temple at the above address, but it is not called Kooksung Temple; it has been called Yongjoo Temple since 1965. (It appears that "Yongjoo Temple" is a variant spelling of "Yongju Temple," mentioned above.) Thus, investigation failed to verify the existence of Kooksung Temple at the address provided. At Yongjoo Temple, the investigators spoke to [REDACTED], the priest whose name appears on key documents identified above. In a statement dated November 30, 1999, [REDACTED] (also known as [REDACTED]) did not verify the beneficiary's claims of past employment. Instead, he indicated that the beneficiary "visited . . . my temple" on one occasion "several years ago. . . . But I do not know who he is. I certainly confirm that the above person never worked as a priest at this temple." Because [REDACTED] was also supposedly

the beneficiary's ordination teacher, the beneficiary's claimed ordination as a monk is seriously in question.

Investigators obtained a copy of the beneficiary's passport application, dated June 30, 1992, which indicated that the petitioner worked at Daehan Stain Company. The beneficiary's employment at a stain company in 1992 further contradicts his claim to have been a Buddhist monk, and only a Buddhist monk, since 1989. . . .

The petitioner's prior submission of highly suspicious documentation on behalf of this beneficiary raises credibility issues that simply cannot be ignored when weighing the preponderance of evidence. . . .

Any rebuttal evidence offered by the petitioner must be at least as credible and verifiable as the investigators' visit to the claimed site of Kooksung Temple and the comments, obtained in person, from the individual named as the beneficiary's former employer and ordination teacher.

In a notice dated December 21, 2005, the director advised the petitioner that the above information raised serious questions of credibility and suggested that the beneficiary had attempted to obtain immigration benefits by fraud or misrepresentation. The director's notice reads, in part:

[A]s part of the instant petition, on September 18, 2003 the petitioner submitted a summary of the beneficiary's "Employment History." This document indicates that the beneficiary worked as a "Buddhist Monk" at a "Kooksung Temple, Seoul, Korea" from March 1989 to July 1996. The petitioner identified no other employers of the beneficiary. U.S. Citizenship and Immigration Services (USCIS) Investigators failed to verify the existence of Kooksung Temple at the address provided. Further, at Yangyoo Temple, the investigators spoke to [REDACTED], the priest whose name appears on the beneficiary's key documents. In a statement dated November 30, 1999, [REDACTED] (also known as [REDACTED]) did not verify the beneficiary's claim of past employment. Instead he indicated that the beneficiary visited his temple on one occasion "several years ago" . . . "But I do not know who he is. I certainly confirm that the above person never worked as a priest at this temple."

Because [REDACTED] was also supposedly the beneficiary's ordination teacher, the beneficiary's claimed ordination as a monk is seriously in question. Further, investigators obtained a copy of the beneficiary's passport application, dated June 30, 1992, which indicated that the beneficiary worked at Daehan Stain Company. The beneficiary's employment at a stain company in 1992 further contradicts his claim to have been a Buddhist monk, and only a Buddhist monk, since 1989.

For reference, here is the text of the "Employment History" document:

EMPLOYMENT HISTORY OF [THE BENEFICIARY]

8/2000 – present	Buddhist Instructor	[The petitioning temple]
1/1999 ¹ – 7/2000	Sick leave	
11/1998 – 9/1999	Buddhist Instructor	[The petitioning temple]
1/1998 – 11/1998:	Volunteer Buddhist Instructor	[The petitioning temple]
3/1989 – 7/1996:	Buddhist Monk	Kooksung Temple, Seoul, Korea

In response to the notice, counsel states that the director erred in stating “The petitioner identified no other employers of the beneficiary” beside Kooksung Temple, because the “Employment History” document also identified the petitioning temple as one of the beneficiary’s employers. There appears to have been some confusion owing to the director’s imprecise wording. The director should have offered the more accurate observation that the “Employment History” document identified no employer other than Kooksung Temple during the period from 1989 to 1996.

Counsel states: “The agency alleges, without any support whatsoever, that the beneficiary has claimed that he worked as a Buddhist monk, and only a Buddhist monk, since 1989. No such claim has been made by either the petitioner or the beneficiary.” Counsel contends “The beneficiary was *never* asked to provide . . . information” about his employment at Daehan Stain Company” (counsel’s emphasis). We reiterate, here, that the beneficiary completed Form G-325A on June 11, 1997. This document cautioned against “knowingly and willfully falsifying or concealing a material fact.” A section of this form is for “Applicant’s Employment Last Five Years,” establishing that information about that employment consists of material facts that the beneficiary was not permitted to conceal. In this section, the beneficiary listed two items:

Visitor	USA	7/96 – Present Time
Kooksung Temple	Seoul, Korea	3/89 – Present

The beneficiary identified no other employer during the five-year period from June 11, 1992 to June 11, 1997. By failing to list any other employers, the beneficiary effectively asserted that Kooksung Temple was his only employer between June 1992 and June 1997. The petitioner’s “Employment History” document lists a protracted period of “sick leave” with no identified employer at all. Therefore, it cannot realistically be asserted that the “Employment History” is limited only to religious employment.

Counsel asserts: “as explained in the enclosed letters, the Beneficiary was a Director of the Daehan Stain Company. He did not run the company. His wife and son did. Being a Director of a company is not a full-time job. . . . The Daehan Stain Company indirectly generates income for the Beneficiary as it is run by members of his family.” As to why the beneficiary listed Daehan Stain Company, rather than Kooksung

¹ This appears to be a typographic error; the date “10/1999” would better conform to the chronology offered.

Temple, on his passport application, counsel states that the “English version of the Korean Passport Application appears to indicate that the question being answered was ‘Name of company.’ As a temple is not a company and the Daehan Stain Company is, ‘Daehan Stain Company’ would have been the proper answer.”

The only evidence that counsel offers to support the claim that the beneficiary performed minimal work at Daehan Stain Company is a new letter attributed to [REDACTED] the latter individual identified as the secretary of Kooksung Temple. The letter reads, in part: “This is to confirm that [the beneficiary] used his name as a Representative Director of Daehan Stain Company . . . but the business was managed by his wife . . . and his second son. . . . [The beneficiary] worked everyday for Kooksung Temple.” Counsel does not explain why temple officials are apparently the best available witnesses to describe the beneficiary’s duties at a secular company. We find that this letter does not outweigh the investigative findings. We are not persuaded that the individual who signed this letter as Soon Sung Ha is a credible witness, for reasons we shall discuss shortly.

The witness identified as [REDACTED] also attempts to account for the investigator’s inability to locate Kooksung Temple, and for [REDACTED] earlier statement to the investigator. The witness states:

Kooksung Temple was a branch temple of our temple that led meditation and taught Buddhist doctrine, but it was not exposed out front. Kooksung Temple was not registered in the Ministry of Culture. . . . The Kooksung Temple was closed on December 1, 1998 when [the beneficiary] went to the U.S. to work for [the petitioner] as a Buddhist Instructor.

In another letter, the witness states: “The U.S. Embassy requested a background checking in December 1999, but I misheard the name. I heard Kyung Kon Hwang, therefore, I did not verify any information; however, I do verify all of the [claimed] experience for [the beneficiary].” Counsel states: “The two names are spelled differently in both English (Kon (wrong) vs. Kwon (correct)) and Korean (권 (wrong) vs. 권 (correct)).”

As noted previously, the beneficiary had provided a street address for Kooksung Temple. The investigator visited that address, and spoke to [REDACTED] (also known as [REDACTED]). The investigator reported:

Priest Cheongha indicated that he founded the Yongjoo Temple in 1965 and that the name of temple “Yongjoo” had never been changed from 1965 to the present. Priest Cheongha was shown the picture of [the beneficiary] on the passport application. He indicated that [the beneficiary] had visited only one time to his temple with an acquainted person several years ago. At that time, [the beneficiary] told him that he wanted to be a common member of the believer [sic] of the temple. He indicate[d] that is all he knows about [the beneficiary]. He also indicated that he never knew [the beneficiary], and that [the beneficiary] never worked as a Priest at the Yongjoo Temple.

The claim that [REDACTED] did not recognize the beneficiary’s mispronounced name does not account for the evidence. The Investigative Report shows that Soon Sung Ha did not merely deny recognizing the beneficiary’s spoken name. Rather, Soon Sung Ha was shown a photograph of the beneficiary, and

acknowledged having met him on one occasion. The passport application attached to the photograph shows the name "Kwon" in Roman letters and the Korean character "권."

The AAO had previously advised that the petitioner: "Any rebuttal evidence offered by the petitioner must be at least as credible and verifiable as the investigators' visit to the claimed site of Kooksung Temple and the comments, obtained in person, from the individual named as the beneficiary's former employer and ordination teacher." The materials that the petitioner has offered in rebuttal do not meet this standard. The latest submission contains no first-hand documentary evidence regarding the extent of the beneficiary's work at Daehan Stain Company, and no documentary evidence that Kooksung Temple ever existed at the street address provided by the beneficiary. The new attempt to account for [REDACTED]'s prior statement fails to take into account that [REDACTED] recalled the beneficiary when shown a photograph of him. The claims set forth in the newly submitted letters appear to be little more than *ad hoc* explanations tailored to the director's assertions.

Counsel argues that the director has ignored evidence that "clearly identified the Petitioner as the Beneficiary's current employer, and as the Beneficiary's sole employer . . . since 2000, and for the entire relevant, statutory two-year period." Evidence that undermines the petitioner's credibility, or that potentially implicates the beneficiary in fraud, does not become irrelevant simply because it falls outside that two-year period. As the AAO noted in its remand order, section 212(a)(6)(C)(i) of the Act indicates that any alien who "has sought to procure" immigration benefits is inadmissible. The statutory clause contains no time limit. Once an alien seeks to procure benefits by fraud, then it will always be the case that the alien has sought those benefits. Also, the credibility issues in this instance are directly relevant because they relate to the beneficiary's religious credentials, purportedly issued by [REDACTED] who gave a statement to investigators when shown a photograph of the beneficiary. Because [REDACTED] directly told investigators that he has had only minimal contact with the beneficiary, we cannot accept the beneficiary's ordination documents and other credentials bearing [REDACTED]'s name.

Because previous correspondence had not specifically informed the petitioner that investigators had shown [REDACTED] the beneficiary's photograph, the AAO issued a notice of adverse evidence to that effect on August 30, 2006, pursuant to 8 C.F.R. § 103.2(b)(16)(a)(i). The record contains no new correspondence or any other indication that the petitioner has responded to this latest notice. The AAO therefore considers the record to be complete as it now stands, and the derogatory information to be unrebutted.

For reasons set forth above, we find that the petitioner's claims regarding the beneficiary's past experience and credentials lack credibility. It appears that the beneficiary's involvement in religious activities has been exaggerated, whereas his secular employment activities have been concealed or understated. Therefore, we affirm the director's finding that the petitioner has not presented sufficient evidence of eligibility.

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, we shall affirm the denial of the petition.

ORDER: The director's decision of December 21, 2005 is affirmed. The petition is denied.