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U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 03 2007
WAC 06 260 51586

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

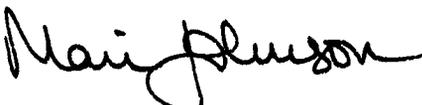
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, Chief
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 dismissed.

The petitioner seeks classification 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 priest at Sri Lakshmi Temple, Ashland, Massachusetts. The director determined that the petitioner had not established that he had the necessary qualifications or the requisite two years of continuous work experience as a priest immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established Sri Lakshmi Temple's ability to compensate the petitioner at the level offered.

On appeal, the petitioner submits letters, photographs, and copies of various documents.

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 August 28, 2006. Therefore, the petitioner must establish that he was continuously performing the duties of a priest throughout the two years immediately prior to that date.

Documents submitted with the initial filing show that the petitioner worked for Sri Lakshmi Temple as early as 1997, but the petitioner did not claim to have worked there continuously throughout the two-year qualifying period. Prior to the execution of a one-year contract beginning May 1, 2006, the petitioner's recent work at the temple appears to have been limited to a small number of specific events at which the petitioner appeared by invitation. [REDACTED] then President of the Board of Trustees of New England Hindu Temple, Inc. (of which Sri Lakshmi Temple is a division), stated that the petitioner worked at the temple from 1997 to 2001, but the petitioner's only stated work there during the qualifying period was when his "presence was requested . . . in 2005 to help us conduct the *Jeernodharan a Mahakumbhabhishekam*, an event performed only once in 12 years." The petitioner's passport shows international travel during the qualifying period, which would preclude continuous employment at the temple during that time.

On December 11, 2006, the director issued a request for evidence (RFE), instructing the petitioner to submit "evidence of the beneficiary's work history for the years 2004, 2005 and 2006" along with documentation of payment. The director specified that "[e]ach experience letter must be written by an authorized official from the specific location at which the experience was gained."

In response, [REDACTED] now identified as a Trustee rather than President of the Board of Trustees, stated that the petitioner "has worked as a Hindu priest at Sri Lakshmi Temple during the years 1997 to 2000 and has [subsequently] been invited to perform[] religious services during special and religiously significant events at Sri Lakshmi temple." As in his previous letter, [REDACTED] identified only one occasion between August 2004 and August 2006 when the petitioner appeared at Sri Lakshmi Temple, specifically the aforementioned event in 2005. [REDACTED] stated that the petitioner has performed ceremonies at other sites, for instance "the *Atirudram* event at Stroudsburg, PA," but [REDACTED] did not establish personal, first-hand knowledge of the petitioner's involvement in these events. The petitioner submitted no documentary evidence of these only vaguely described activities.

In a letter dated January 13, 2006, [REDACTED], stated that the beneficiary "was residing in India . . . between the years 2000 to 2004, during which period I know that he was practicing as a religious professional, conducting Hindu religious rites." The two-year qualifying period did not commence until August 2004, and therefore the letter covers, at most, less than five months of the qualifying period. Furthermore, [REDACTED] did not claim to be an official of any Hindu temple where the beneficiary worked. Rather, [REDACTED] is an attorney, whose letterhead includes the word "Advocate" and whose address is in the "Law Chambers, High Court Buildings." As such, the petitioner has not established [REDACTED] authority to attest to the beneficiary's continuous past experience as a Hindu priest.

For evidence of compensation, the petitioner submitted a copy of his uncertified Internal Revenue Service (IRS) Form 1040NR-EZ nonresident alien income tax return for 2005, showing that he reported \$3,600 in wages and salaries that year. Although the petitioner is married with three children, he identified himself as single on the tax return, and he used a version of the form that is for the exclusive use of "Certain Nonresident Aliens With No Dependents."

An IRS Form W-2 Wage and Tax Statement identified New England Hindu Temple, Inc. as the petitioner's employer and the source of the entire \$3,600. The petitioner indicated that he was in the United States for 153 days from May 1 to September 30 of 2005 under an R-1 nonimmigrant religious worker visa. The petitioner added that he was in the United States for 28 days (dates unspecified) in 2004. The tax return is dated December 19, 2006, eight days after the director issued the RFE. Like a delayed birth certificate, the late-filed tax return raises serious questions regarding the truth of the facts asserted. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991) (discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings).

A photocopy of the petitioner's passport shows that the petitioner was in India in June 2005, and was admitted into the United States on June 5, 2005. The petitioner's documented absence from the United States at that time contradicts the petitioner's assertion, above, that he was in the United States for 153 days between May 1 and September 30, 2005 (a period exactly 153 days in length). This contradiction casts further doubt on the credibility of the petitioner's untimely 2005 income tax return. 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, 591 (BIA 1988).

For 2006, the petitioner paid estimated taxes in the respective amounts of \$1,700 (federal) and \$400 (state). The payments are dated January 2, 2007, several weeks after the issuance of the RFE. The record contains no primary documentation to establish the income from which this tax was paid.

The petitioner also submitted tax documents from his earlier sojourn in the United States, but this earlier work occurred entirely outside the qualifying period and therefore need not be examined here in detail. We note that, on these forms, the petitioner identified himself as married with two children (his third child was born after this period of employment). He claimed his children as dependents on these returns, unlike on his untimely 2005 "No Dependents" return.

The director denied the petition on February 6, 2007, stating that the evidence submitted is insufficient to establish the petitioner's continuous work as a priest throughout the two-year qualifying period.

On appeal, the petitioner submits letters from six individuals who attest to the petitioner's experience as a Hindu priest. Two of the witnesses are based in the United States, one of whom attests only to the petitioner's work at Sri Lakshmi Temple. The other United States witness, [REDACTED] refers only briefly and vaguely to the petitioner's work in India, stating:

I have also engaged [the petitioner] to perform religious ceremonies in India during my visits to India. I have had personal knowledge of him pursuing his career as [a] Vedic priest conducting private religious ceremonies in Chennai during the period from October 2000 to April 2006 (Except for brief periods of his Visits to USA as a priest). . . .

[The petitioner] was conducting various private Hindu religious ceremonies during his residence in India in 2004 to 2005.

Of the four remaining witnesses who discuss the petitioner's claimed work in India, only one claims to be a priest, temple official, or other religious worker. That individual, [REDACTED], is a Hindu priest who states that the petitioner "was working with me as my assistant during the years 1987 to 1992," a span well outside the 2004-2006 qualifying period. The remaining witnesses (at least one of whom is a physician at a hospital) simply assert that they have known the petitioner as a priest for several years. The letters lack such basic details as the terms of the petitioner's remuneration and the name(s) of any temple(s) with which the petitioner was associated at the time. A number of witnesses indicate that they personally hired the petitioner for one-time "private religious ceremonies." There is no evidence that these private ceremonies amounted to continuous, full-time work rather than sporadic engagements.

8 C.F.R. § 204.5(g)(1) states: "[e]vidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) . . . and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien." The petitioner has not submitted any letters from former employers (e.g., Hindu temples) in India during the qualifying period, nor has the petitioner even identified those former employers. None of the witnesses claims that Hindu tradition precludes employment of priests at particular temples. Rather, a number of witnesses acknowledge the petitioner's recent employment at Sri Lakshmi Temple, and those witnesses do not indicate that this employer/employee arrangement is in any way unusual within the Hindu faith.

The regulation at 8 C.F.R. § 103.2(b)(2)(i) states, in part:

The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document . . . does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence . . . 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 not established the unavailability of primary or secondary evidence. The petitioner has simply relied, without explanation, on a series of unsworn letters, some of which do not even touch on the relevant issues. Letters from physicians and other secular witnesses, asserting that the petitioner has been a priest for a long time, cannot suffice to establish the required two years of full-time, exclusive, compensated work as a Hindu priest immediately preceding the petition's filing date.

Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Here, the petitioner has failed to submit requested evidence, thereby precluding a material line of inquiry regarding specific details of his claimed past work in India.

The petitioner has offered at best fragmentary evidence of his activities during the qualifying period. With respect to his work in the United States in 2005, he did not file a tax return to report this income until after the

director asked for evidence of compensation, causing the impression that he filed the return not to comply with tax law but to create the requested evidence. Even then, the petitioner's passport contradicts the claims on the 2005 tax return.

For the above reasons, the AAO affirms the director's finding that the petitioner has failed to establish the required two years of continuous work as a priest immediately prior to the filing date.

The next issue concerns the prospective employer's ability to pay the petitioner's salary of \$1,500 per month plus housing and health insurance. 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.

The petitioner's initial submission included copies of pay stubs from New England Hindu Temple, Inc. with uncashed checks still attached, showing monthly payments of \$1,500 in May, June and July of 2006.

In the December 2006 RFE, the director requested "copies of annual reports, federal tax returns (with appropriate signature(s)), or audited financial statements" to establish "the petitioner's ability to pay the beneficiary's wage" (*sic*).

In response, [REDACTED] successor as President of New England Hindu Temple's Board of Trustees, stated that the petitioner "is currently employed at the temple as a religious priest. His current monthly salary is \$1500. . . . Additionally, he is provided with free housing and temple paid health insurance."

As evidence of compensation, the petitioner submitted photocopies of two unprocessed \$1,500 checks payable to him from New England Hindu Temple, Inc. The magnetic ink character recognition information at the bottom of each check, which includes the account number, routing number and check number, should also reflect the dollar amount of the check once the check is processed.

One check, number 3247, is dated September 29, 2006; the other, number [REDACTED], is dated January 1, 2007. The 2006 check bears the notation "Sept-06 Salary," but the attached stub says both "Sept-06 salary" and "Jun-06 Salary." The reference to the petitioner's June 2006 salary is unexplained.

The petitioner's response to the RFE contained none of the evidence that the director had requested with regard to the temple's ability to pay the beneficiary at the proffered rate of compensation.

In denying the petition, the director acknowledged the petitioner's submission of two checks, but noted that the checks, as reproduced, were not processed. The director also stated that "the payee does not match the name of

the beneficiary.” The director also found that “[t]he petitioner failed to submit copies of annual reports, federal tax returns, or audited financial statements as instructed.”

The name on the paychecks is a truncated but recognizable variation of the petitioner’s name. There is no indication in the record that these checks were issued to anyone other than the petitioner. There remains, however, the director’s finding that the petitioner failed to provide the evidence required by 8 C.F.R. § 204.5(g)(2).

On appeal, the petitioner submits bank documents showing that New England Hindu Temple, Inc., had substantial amounts on deposit in late 2006 and early 2007. The petitioner also submits copies of two processed checks, one of which (number 3247) was previously reproduced (as an unprocessed check) in the RFE response. The other check (reproduced at a low resolution, making the date and check number partially illegible) was processed on February 6, 2007.

The petitioner also submits a copy of his 2006 income tax return and its accompanying IRS Form W-2, showing that New England Hindu Temple, Inc., paid the petitioner \$11,200 for the year. This amount is slightly less than seven and a half months’ pay at the proffered wage of \$1,500 per month.

The above-cited regulation at 8 C.F.R. § 204.5(g)(2) states that evidence of ability to pay “shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.” In context, the regulation refers to the employer’s tax returns, not the alien’s tax returns. In this instance, the petitioner has not submitted any of the required types of evidence or persuasively accounted for the absence of such evidence. As stated earlier in this decision, the petitioner’s failure to submit the required evidence is grounds for denial pursuant to 8 C.F.R. §§ 103.2(b)(2)(i) and (14). On this basis alone, the petition may not be approved.

The final issue in the director’s decision concerns the petitioner’s authorization to conduct religious worship. 8 C.F.R. § 204.5(m)(3)(ii)(B) requires the prospective employer to demonstrate 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.

The petitioner’s initial submission contains numerous letters attesting to the petitioner’s activities as a priest at Sri Lakshmi Temple. The letters, however, do not establish the circumstances under which the petitioner was initially authorized or otherwise judged fit to act as a priest and to perform the duties of Hindu clergy. The petitioner’s initial submission did not directly address the issue of the petitioner’s credentials.

The director, in the RFE, requested “evidence to show that the beneficiary has been ordained and the requirements for ordination. If the religion does not have formal ordination procedures, there must be other evidence that the individual has authorization to conduct religious worship and perform other services usually performed by members of the clergy.”

letter in response to the RFE indicated that the petitioner “is a learned priest who has undergone a rigorous and extensive training in the study of Vedas (*Holy scriptures of the Hindus*) and Vaidheeka sastras

(*Hindu religious rituals and prayers*) in India. He has over twenty years of experience in the conduct of Hindu Religious services.” As with other assertions, [REDACTED] cited no source for this information.

In the denial notice, the director repeated the regulatory requirements at 8 C.F.R. § 204.5(m)(3)(ii)(B) and found that the petitioner “failed to submit any evidence regarding this requirement.” On appeal, the petitioner submits documentation regarding the various visas he has received to perform religious work in various countries. In a newly submitted letter dated May 5, 2006, addressed to Massachusetts’ Secretary of State, [REDACTED] identified eight individuals (including the petitioner) as “fully qualified religious staff who ha[ve] been ordained to perform wedding [ceremonies] prescribed by the Hindu scriptures.” [REDACTED] requested that the Commonwealth of Massachusetts “accept and honor the marriage certificates, christening certificates and all other similar certificates [from the named individuals] as valid documents.”

It appears that the above documents are intended to show that various *governments* have “authorized” the petitioner to work as a priest. The regulations, however, relate to *denominational* rather than governmental authorization, analogous to ordination within many Christian denominations. More relevant to the regulatory requirements is a translation of a certificate, stating that the petitioner passed “the Vedic examination.” This document does not explain whether or not passing the examination is, by itself, sufficient qualification to work as a Hindu priest.

Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). The certification by translator [REDACTED] does not contain the required information, stating only that the petitioner’s “certificates . . . have been translated by me.” Therefore, the translation of the certificate is not acceptable under the applicable regulations.

A number of witnesses state that the petitioner is qualified as a priest because he was born to a [REDACTED] family (as shown by his family name), wears a sacred thread, and has completed extensive training. All of the witnesses who so state are in Massachusetts. As such, they have demonstrable knowledge of some aspects of the petitioner’s qualifications (such as his use of the sacred thread and the [REDACTED] derivation of his surname) but not of his training, which would have taken place in India rather than in Massachusetts. With regard to these witnesses, the best that can be said is that they sincerely believe the petitioner to be qualified and authorized to perform the duties of a Hindu priest. Photographs of the petitioner performing various religious functions in Massachusetts add nothing of substance to this issue.

We affirm the director’s finding that the petitioner has failed to establish his qualifications pursuant to 8 C.F.R. § 204.5(m)(3)(ii)(B). The AAO does not find that the petitioner clearly or definitely is *not* a qualified Hindu priest; he may well be. For our purposes, however, the petitioner has failed to submit sufficient evidence to meet his burden of proof and establish, by a preponderance of evidence, his qualifications.

While the determination of an individual’s status or duties within a religious organization is not under the purview of Citizenship and Immigration Services (CIS), the determination as to the individual’s qualifications to receive benefits under the immigration laws of the United States rests within CIS. Authority over the latter

determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607, 608 n.2 (BIA 1978).

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.