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FILE: [REDACTED]
EAC 05 041 53739

Office: VERMONT SERVICE CENTER

Date: JUL 20 2007

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.

Mauro Deadrack
Robert P. Wiemann, Chief
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 on appeal. The appeal will be dismissed.

The petitioner is a self-described “group of . . . Buddhist Churches.” 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 its financial ability to compensate or support the beneficiary.

On appeal, the petitioner submits additional documentation which, the petitioner asserts, shows that the entity turned “a small profit” in 2005.

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 . . . ; 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 sole articulated basis for denial concerns the petitioner’s ability to compensate the beneficiary. 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.

Pursuant to 8 C.F.R. § 204.5(d), the priority date of a special immigrant petition is established at the date of filing. Therefore, in this instance, the petitioner must establish its ability to compensate or support the beneficiary from the November 29, 2004 filing date onward.

A “List of Employees” names seven “Religious Employees,” including the beneficiary, and ten “Non-religious Employees,” but also includes this disclaimer: “There are no salaried employees. All employees work for the Church on a voluntary basis.” While “voluntary” could be interpreted to mean that the

petitioner's workers are entirely uncompensated, other materials in the same submission indicate that this term means only that the workers receive no cash wage or salary.

His Holiness [REDACTED] President and Chairman of the petitioning organization, indicated at the time of filing that the petitioner "will assume all financial responsibility for [the beneficiary] while he is in America, including housing, food, travel and medical or other costs that may arise as well as any expenses that may arise while he is traveling outside the United States in his official capacity for this church." The petitioner did not specify or estimate the cash value of its material support of the beneficiary, nor did the petitioner document its ownership or control, for instance, of any property where the beneficiary resides.

An unaudited document submitted with the initial filing indicates that the petitioner took in \$74,885.13 in income. The document does not show the petitioner's expenses or liabilities or otherwise show the disposition of that income.

The petitioner's initial submission also included a copy of an Application for Real Property Tax Exemption for Nonprofit Organizations, listing the "Name of Organization" as the petitioning entity "[REDACTED] in Greenville, New York. The document reads, in part: "The applicant conducts a retreat center on the above property." The "above property" is not a physical address, however; the only address provided is a rural delivery box number. This document contains the only specific mention of OCD, by name, in the original submission, although [REDACTED] did indicate that the beneficiary had supervised "projects . . . at both our Buddhist retreat center in Greenville, NY and our Church in New York City." On the Form I-360 petition, asked to provide the beneficiary's address, the petitioner wrote an address in New York City, not in Greenville.

On May 13, 2005, the director instructed the petitioner to submit a copy of either the petitioner's "most current fiscal year Form 990 or 990 EZ (Return of Organization Exempt From Income Tax" or "a current financial statement that either has been reviewed or audited by a Certified Public Accountant" (CPA). In response, the petitioner submitted a CPA-reviewed financial statement for OCD, described as "a Tibetan Buddhist retreat center located in Greenville, New York. It is the international retreat center of" the petitioning organization. The statement contains the following figures:

	2003	2004
Total Current Assets	\$28,367.13	\$7,898.82
Total Income ¹	69,181.70	29,170.54
Total Expense	121,267.55	49,663.35
Net Income	-52,085.85	-20,492.81

The above figures indicate that OCD spent considerably more than its income in both 2003 and 2004, and that its current assets dwindled substantially during the same period. It is difficult, from the manner in which the statement is itemized, to determine what the petitioner spent on the beneficiary's support during those years.

¹ For simplicity, nominal sums listed as "Other Income" and "Other Expense" for calendar year 2003 have been included in the "Total Income" and Total Expense" figures, although listed separately on the original document.

The director denied the petition on December 28, 2005, stating that the net losses described above cast doubt on the petitioner's continued financial stability.

On appeal, [REDACTED] states:

The financial statements provided do in fact show losses for the years 2003 and 2004. An unaudited financial statement (copy enclosed) for 2005 does show a small profit.

The expenses for the 2003, 2004 and enclosed 2005 periods include the nominal incremental expenses of providing for the meals and incidentals required to support [the beneficiary]. Therefore, any costs associated with supporting [the beneficiary] have been adequately covered in these prior periods.

The newly submitted "Profit & Loss" document and accompanying "Balance Sheet" show the following figures for calendar year 2005:

Total Current Assets	\$11,351.63
Total Income ²	99,328.26
Total Expense	96,242.10
Net Income	3,086.16

As with the prior reports, the new document does not specify the amount OCD spent on the beneficiary's behalf. The 2003 report falls prior to the 2004 filing date. The 2004 and 2005 reports, combined, show a cumulative net loss of \$17,406.65 over the two-year period. Therefore, even if OCD supported the beneficiary during those years, it is far from clear how much longer OCD would continue to be able to do so, given the general pattern of negative cash flow.

More significantly, the entity that filed the petition is not OCD itself, but the corporation that owns OCD. Thus, a financial report on OCD cannot provide a complete financial picture of the petitioning corporation. The CPA indicated, for instance, that the petitioner "owns the real estate and personal property of the retreat center. As such, those assets are not shown on the books of OCD." If OCD does not own the property, then OCD is not the entity providing the beneficiary's housing.

The petitioner has not submitted any evidence regarding the financial status of the petitioning entity, nor has the petitioner justified its submission of materials relating only to OCD, a subordinate but not independent "unit" of the petitioning corporation. There is no evidence that OCD exists as a separate, distinct corporate entity. The petitioner has never claimed or shown that the beneficiary's work is entirely limited to OCD, or that OCD alone has been and will be solely responsible for the beneficiary's basic material support.

² Includes separately reported "Other Income."

We note that, while the director partially quoted the regulation at 8 C.F.R. § 204.5(g)(2), the director omitted the part of the regulation that specifies the form that the evidence of ability to pay must take. The regulations states that such evidence “shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.” The petitioner has submitted none of these types of evidence. We acknowledge that the director never directly instructed the petitioner to submit these specific types of evidence (apart from a Form 990, which is in many ways the functional equivalent of a federal tax return), but this omission by the director does not relieve the petitioner of this evidentiary burden. It remains that the financial evidence that the petitioner did submit is both incomplete and facially indicative of an overall pattern of financial loss.

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.