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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: MAR 06 2007
SRC 05 153 51173

IN RE: Petitioner:
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.

Mari Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner is a Hindu 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 priest. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a priest immediately preceding the filing date of the petition.

On appeal, the petitioner submits, for the first time, documents that the director had previously requested.

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 May 9, 2005. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a priest throughout the two years immediately prior to that date.

In a letter submitted with the initial filing of the petition, Anil Sethi, Trustee of the petitioning temple, stated that the beneficiary had worked as a priest at the petitioning temple since July 2002.

On June 15, 2005, the director issued a request for evidence (RFE), instructing the petitioner to submit further documentation regarding the beneficiary's past work. Specifically, the director requested evidence of compensation. The director also stated: "Submit an IRS certified copy of the income tax returns with all the pertaining W-2s for the two years preceding the filing of this petition." In response, Anil Sethi stated that the beneficiary received a salary of $300 per month (plus "cost of residence") from 2002 to 2003, increased to $400 per month thereafter.

The petitioner submitted copies of checks showing monthly payments of $300 or $400 to the beneficiary. The petitioner referred to these as "salary checks." The checks from 2004 and 2005, as copied, had not yet been presented for payment. The copies of some of the earlier checks appear to derive from bank statements, and these do show evidence of payment. The later checks show an uninterrupted pattern of payment from June 2004 to June 2005, but there are only two checks dated during the first year of the qualifying period. Specifically, there is a $300 check dated July 20, 2003, marked "June 2003," and an $800 check dated December 2003, marked "Sept + Nov Monthly." Thus, the checks do not establish continuous payments throughout the entire qualifying period.

A financial balance sheet, labeled "All Years . . . 1/1/00 Through 8/31/05," indicates that the petitioner's "Total Outflows," for all purposes throughout that nearly six-year period, totaled $174,510.92, of which $12,985.00 went for "Emp Salary." Detailed breakdowns, including dates, check numbers and amounts, identify the beneficiary as the petitioner's only paid employee. The breakdowns indicate that the petitioner paid the beneficiary $300 per month from August 2002 to September 2003, increased to $400 per month thereafter (with the cost of immigration filing fees deducted from the beneficiary's checks in October 2002 and April 2005). The records do not show check numbers prior to May 2004.

The balance sheets contain no line items that readily account for the beneficiary's "cost of residence," which is said to constitute $700 of the beneficiary's compensation each month. There is no evidence that the petitioner owns, rents, or is otherwise financially responsible for the property where the beneficiary resides.

The petitioner submitted copies of bank statements, including reduced-size copies of canceled checks. The statements confirm some of the checks issued to the beneficiary, including checks issued as early as November 2002, but there are very significant gaps in the sequence. For instance, the petitioner has not submitted any of the statements for the period between September 2003 and April 2004. This gap more or less coincides with the beneficiary's missing checks.

Furthermore, although the detailed listing of financial transactions indicates that the beneficiary began receiving a salary in August 2002, the bank statements from that period show no checks issued to the beneficiary, and no cash withdrawals in amounts that match claimed payments to the beneficiary. Counsel, in his cover letter, refers to the bank statements, but does not explain, or even acknowledge, the major gap in the sequence of those bank statements or the corresponding checks.

Several members of the petitioner's congregation have jointly signed statements that the beneficiary has served at the temple "for more than two years in all kinds of priestly services." No temple official mentioned, much less explained, the near-total absence of checks from before June 2004.

Although the director had instructed the petitioner to submit Internal Revenue Service (IRS) certified copies of the beneficiary's income tax returns and IRS Form W-2 Wage and Tax Statements from the qualifying period, these documents did not accompany the RFE response.

The petitioner's response does include an uncertified copy of the beneficiary's 2004 income tax return, on which the beneficiary identified himself as a "Church Minister" and reported $4,800 in salaries. The return is dated August 11, 2005, several months after the April 15 filing deadline. The petitioner also submitted a copy of a letter from the IRS, dated August 23, 2005, indicating that the beneficiary's "time to file" had been extended to August 15, 2005. It appears that the beneficiary did not file a 2003 tax return at all, and did not file a return for 2004 until the director asked for a copy of it.

The beneficiary reported $4,800 in salaries on his untimely 2004 income tax return, but no Form W-2 accompanies the tax return reproduced in the record. The record does, however, contain a copy of IRS Form 1099-INT showing $49.51 interest earned on the beneficiary's bank account. Counsel, in the cover letter, did not explain why the petitioner believed the Form 1099-INT to be worth submitting but not the Form W-2. Indeed, counsel did not even acknowledge the director's instruction to submit a copy of the beneficiary's Form W-2. Nothing in the petitioner's response to the RFE even suggested that Forms W-2 existed for the beneficiary for 2003 or 2004.

The director denied the petition on September 13, 2005. The director acknowledged the copies of checks that the petitioner had submitted, but found: "It could not be determined that these were paychecks. No W-2 Forms for 2003 or 2004 were submitted to substantiate a salary received by the beneficiary."

On appeal, the petitioner resubmits copies of checks issued to the beneficiary in 2005, as well as, for the first time, copies of IRS Forms W-2 indicating that the petitioner paid the beneficiary $3,900 in 2003 and $4,800 in 2004. Counsel offers no explanation for the petitioner's failure to submit these materials in response to the RFE when the director specifically requested them. At the time of the RFE response, the petitioner did not even claim that these forms existed at all, much less account for their absence.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The 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).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have

submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

The record shows that the beneficiary received a series of regular monthly payments, and the petitioner purports to have maintained meticulous financial records since 2000, but there is a significant gap in the evidence that precludes a finding that the petitioner has established the beneficiary's continuous employment from May 2003 to May 2005. The beneficiary appears to have worked for the petitioner as a priest for at least part of the qualifying period, and for a time before that period as well, but the evidence of record is not sufficient to warrant a finding that the beneficiary's work during the qualifying period was uninterrupted, full-time, and exclusive of outside secular employment. The beneficiary's late filing of his tax return and the untimely appearance of the Forms W-2 raise more questions than they purport to answer. On balance, we cannot find that the petitioner has met its burden of proof with respect to the beneficiary's experience during the two-year qualifying period immediately prior to the petition's filing date.

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.