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U.S. Citizenship
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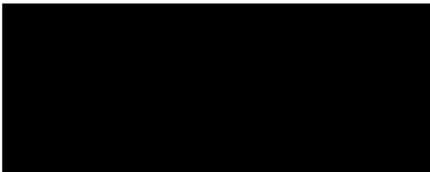


FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: MAR 15 2007
EAC 04 258 52248

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:



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, 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 sustained and the petition will be approved.

The petitioner is a gurdwara (sometimes spelled "gurudwara"), or Sikh 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 granthi (referred to as a "preacher" or "priest"). The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a granthi immediately preceding the filing date of the petition.

On appeal, the petitioner submits more detailed letters regarding the beneficiary's past experience.

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 September 16, 2004. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a granthi throughout the two years immediately prior to that date.

The beneficiary entered the United States on October 9, 2003 as a B-2 nonimmigrant visitor. Therefore, the beneficiary spent more than half of the 2002-2004 qualifying period overseas, and the petitioner must establish the beneficiary's foreign employment during that portion of the qualifying period.

To attest to the beneficiary's employment abroad, the petitioner has submitted a letter dated July 27, 2004. The letter is a poor-quality fax copy and the signature is not legible. The letter states, in part:

[The beneficiary] has been performing the duties of Head Granthi, [redacted] [redacted] [since] 14-08-1997 in the Gurdwara [redacted], [redacted] [redacted] . . . He goes abroad to fulfill the demand of religious people there after taking permission from the management and return here within stipulated period & again starts to serve the religious gathering here.

At present, he is holding the post of Head [redacted]. On the request of religious people from abroad, he has been performing the duty of religious [redacted] religious preacher in the U.S.A. after taking one year's leave.

The ambiguous statement that the beneficiary has worked "in the U.S.A. *after* taking one year's leave" could be interpreted two different ways. It could mean that the beneficiary arranged for the leave from the gurdwara in India, in order to spend that year working in the United States; or it could mean that the beneficiary took a year of leave from his work as a preacher, and afterward began working in the United States. The letter does not indicate when the "one year's leave" began.

A copy of a letter dated December 21, 2003, jointly from the Head Priest and General Secretary of the Philadelphia Sikh Society, indicates that the beneficiary and two others "are being invited to the Philadelphia [redacted] for a religious prayer meeting. They have stayed here for 2 months so far. The congregation of the gurdwara really appreciated their preachings. So we request that they get another visa for an additional four to six months." Thus, the letter indicates that the beneficiary engaged in "preachings" from c. October 2003 to December 2003, and implies several additional months of later work, although a December 2003 letter cannot establish employment during 2004.

Documentation in the record shows that the beneficiary held a B-1 nonimmigrant business visitor visa, valid from January 2004 to July 2004; his address is shown as being in care of the Philadelphia Sikh Society. This evidence implies that the beneficiary accepted the invitation from the Philadelphia gurdwara. Nevertheless, this documentation predates the period covered by the visa, and therefore it is not *prima facie* evidence that the beneficiary actually performed religious work in Philadelphia through July 2004.

In two separate letters accompanying the initial filing, [redacted] President/Secretary of the petitioning gurdwara, states that the beneficiary "has been performing religious duties at the [petitioning] [redacted] a from July 4th, 2004." A third document, however, refers to celebrations that "will begin on June 18th" and identifies the beneficiary as one of the participants. This document, therefore, suggests that the beneficiary was active at the gurdwara before July 4, at least on that one occasion. Given the proximity of the

petitioner and the Philadelphia Sikh Society, the beneficiary may have simply visited the petitioning gurdwara in mid-June while working at the latter temple.

On May 23, 2005, the director instructed the petitioner to “[s]ubmit evidence that establishes that the beneficiary has the continuous two years full-time experience . . . for the period immediately prior to September 16, 2004.” In response, [REDACTED] repeats the assertion that the beneficiary “has been performing the religious duties [for the petitioner] from July 4th, 2004.”

[REDACTED] Singh, President of [REDACTED], states that the beneficiary “had been performing the religious duties at the above named Gurdwara (temple) since August 14th, 1997.” The full date of the letter (again, a poor-quality fax copy) is not legible. The visible portion of the date reads “06-08-20.” The untranslated page shows the date “06-08-200,” followed by a partially-obscured digit that may be a “5.” Both versions have been stamped “To Take Effect Outside India 11 Jul 2005.” Assuming the translation is accurate, the letter states that the beneficiary has worked “at” – not “for” or “on behalf of” – the temple in India since 1997. If the letter dates from 2005, then the beneficiary’s documented presence in the United States flatly contradicts the letter. If the letter dates from 2004 or earlier, then the letter is too early to be of use in establishing a complete timeline of the beneficiary’s religious activities from 2003 to 2005.

Because the beneficiary left India in 2003, any letter to the effect that the beneficiary still worked for the temple in India as of 2005 has minimal evidentiary weight. Officials in India are not in a position personally to witness or attest to the beneficiary’s work on another continent, and even if the beneficiary remains nominally in the employ of the temple in India, this does not, by itself, show that the beneficiary has continued to perform qualifying work since his 2003 emigration.

The petitioner also submitted copies of IRS Form 990-EZ returns, showing the petitioner regularly pays a “Priest Allowance,” thus demonstrating that the petitioning temple compensates its priest. The petitioner has repeatedly referred to the beneficiary by that title.

The petitioner’s response to the director’s request for evidence does not address the period between October 9, 2003, when the beneficiary arrived in the United States, and July 4, 2004, when he began working for the petitioner.

The director denied the petition on December 29, 2005, stating that the petitioner has “not established the beneficiary’s continuous two-year full-time experience for the period immediately prior to September 16, 2004.” On appeal, the petitioner submits new employment letters. In a letter dated January 12, 2006, Resham Singh states:

[The beneficiary] worked as “Head Priest” from 14th August 1997 to 2nd August 2004 in [REDACTED]

[The beneficiary] was served in [REDACTED] from 14th August 1997 to 30th September 2003. He got the request of U.S. Congregation to serve religious duty as [singer of] Hymns and Preacher in U.S.A. He arrived [in the] USA after taking one year leave. So [the

beneficiary] was present in our record up to 2nd August 2004 but he was not physically present here during this time frame then he requested us to resign his duty on 2nd August 2004. So we relieved him from his religious duty on 2nd August 2004 from this Gurudwara.

The above letter resolves the ambiguous nature of earlier communications from the temple in India.

respectively the President and Secretary of the Philadelphia Sikh Society, state that the beneficiary worked at the society's temple "from 19th October 2003 to 27th June 2004," receiving "food and accommodation" in exchange for his services. The Board of Immigration Appeals ruled that an alien who "receives compensation in return for his efforts on behalf of the Church" is "employed" for immigration purposes, even if that compensation takes the form of material support rather than a cash wage. *See Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982). Therefore, the beneficiary's work for the Philadelphia Sikh Society qualifies as employment.

While the petitioner's submissions prior to the appeal were incomplete, they appear to represent good faith efforts to provide information about the beneficiary's prior work; the petitioner did not completely ignore the issue until after the denial. The new letter from the Philadelphia Sikh Society does not represent a completely new claim. Rather, it clarifies information previously found in the record. The letter is fully consistent with prior submissions, including letters, visa documents and the petitioner's own documents placing the beneficiary in the area before he officially began working for the petitioner in July 2004.

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 met that burden. The available evidence is sufficient to establish a preponderance of evidence in the petitioner's favor, and the director has raised no issues regarding the credibility of any of that evidence. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.