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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **AUG 12 2008**
WAC 07 007 53884

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:
[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 Pluon
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 AAO will sustain the appeal and approve the petition.

The petitioner is a *gurdwara*, 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*, or preacher/teacher. 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, or that the beneficiary is qualified for the position offered.

On appeal, the petitioner submits a brief from counsel, along with letters and other exhibits.

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 under consideration relates to 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 October 10, 2006. 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.

In an introductory letter accompanying the initial filing, ██████████ President of the petitioning entity, stated that the beneficiary “has been working for our church . . . since August 15, 2004,” in exchange for “\$300 per week . . . [and] living accommodations and a vehicle to drive.” The letter did not include information about the number of hours the beneficiary worked per week.

An Internal Revenue Service (IRS) Form W-2 Wage and Tax Statement indicated that the petitioner paid the beneficiary \$15,600 (or \$300 per week) in 2005. The beneficiary’s accompanying income tax return indicated an additional \$2,200 in “Business income” as a “church teacher.” There was no indication of any income from non-religious sources. The tax return was untimely prepared on August 25, 2006. The record contains no IRS Form W-2 for 2004, but the beneficiary’s 2004 income tax return shows gross income of \$8,300 as a “church teacher.”

The record indicates that, at some point, the beneficiary’s rate of pay changed from \$300 per week to \$1,450 per month. Copies of processed checks show that the petitioner paid the beneficiary \$1,450 per month in June, July and August of 2006. A July 2006 bank statement reproduced in the record shows the corresponding check (number 1597) for that month.

On December 11, 2006, the director issued a request for evidence (RFE), instructing the petitioner to submit additional documentation relating to the beneficiary’s work history and compensation. In response, the petitioner submitted copies of previously submitted materials, as well as tax documentation indicating that the petitioner paid the beneficiary \$17,400 (\$1,450 per month) in 2006.

On March 15, 2007, the director issued a second RFE. In that RFE, the director did not request further evidence regarding the beneficiary’s experience, but the director did inquire about the extent of the beneficiary’s duties. In response, counsel claimed that the beneficiary “works 40 hours/week,” including 13 hours per week of “daily service” and “full day religious service.” The beneficiary’s monthly salary is consistent with full-time employment at a rate exceeding minimum wage.

The director denied the petition on August 7, 2007, in part because the petitioner had not submitted sufficient evidence to show that the beneficiary worked full-time as a *granthi* during the two-year qualifying period. On appeal, Punjab Singh, the petitioner’s Chairman of Trustees, states:

[The beneficiary] works full time (35-40 hours per week) at our place of worship during the business week. In addition to [the beneficiary], we employ one individual. Due to the size of our staff and the needs of the temple, we do not have a HR department nor do we utilize a third party payroll company. . . . As a salaried employee [the beneficiary] is not required to submit hours by a time card or time sheet. Further, we have attached 3 affidavits indicating that [the beneficiary] works full time, 35-40 hours per week Monday to Friday 6am to 9am and 5pm to 8pm and Sunday from 8am to 4pm.

All three affidavits share a similar format. The affidavits carry minimal evidentiary weight, because they contain very specific information regarding the affiants’ knowledge of the beneficiary’s work, but the names

of the affiants are handwritten into the otherwise printed documents. For instance, one affidavit reads, in part, as follows, with the handwritten portion designated with a different typeface:

1. I, _____, being duly sworn, depose and attest the following:
2. I am the _____ at the [petitioning entity]. I am physically present at the Gurdwara (temple/place of worship) from the hours of 4:00 PM – 8:00 PM Monday through Wednesday. I have first hand knowledge that [the beneficiary] provides services as a Granthi at our place of worship 8 hours per day, Monday through Friday and additional hours on the weekends.

It appears that the affidavit quoted above was prepared by an unnamed party who did not know _____ name or title, but nevertheless supposedly knew what days _____ was at the *gurdwara*. Other affidavits include the titles of the affiants (“committee member” and “member of Board of trustees”) but again omit their names.

Notwithstanding the unpersuasive nature of the affidavits, the evidence of record is consistent with full-time employment. The beneficiary’s salary exceeds minimum wage for full-time work. Also, in the documentation relating to the beneficiary’s R-1 nonimmigrant status, the petitioner had consistently described the beneficiary’s position as full-time; this is not a new detail that the petitioner contrived only when asked to show that the employment is full-time.

The regulations at 8 C.F.R. § 204.5(m)(3)(ii) indicate that the basic evidentiary requirements extend little beyond statements from a competent official of the religious organization seeking to engage the alien’s services. The AAO notes that the regulation at 8 C.F.R. § 204.5(m)(3)(iv) permits the director to request additional evidence in appropriate cases. It is often the case that further evidence is needed for one reason or another, but this cannot and must not be construed to imply that the letter described at 8 C.F.R. § 204.5(m)(3)(ii) is presumptively insufficient to establish eligibility. The petitioner’s statements have been consistent and credible throughout this proceeding, and the petitioner’s documentary evidence, while fragmentary, is consistent with the petitioner’s claims. The director did not explain why the evidence submitted, which exceeds the regulatory requirements, was nevertheless found to be insufficient.

For the reasons set forth above, the AAO withdraws the director’s finding that the petitioner has not established that the beneficiary possesses the required two years of continuous experience during the two years immediately preceding the petition’s filing date.

The remaining issue relates to the beneficiary’s qualifications. 8 C.F.R. § 204.5(m)(3)(ii)(D) requires the petitioner to establish that the beneficiary is qualified in the religious vocation or occupation. In his introductory letter, _____ stated that the beneficiary “has a diploma from the Gurmat University where he studied the Sikh religion. . . . I can attest that [the beneficiary] has the qualifications and required experience” for the position offered. The petitioner submitted a photocopy of the diploma so mentioned, indicating nine months of study. While the petitioner had submitted some background information about the Sikh religion, that material did not discuss such diplomas or the qualifications necessary to be a preacher or teacher.

In the December 2006 RFE, the director requested “evidence that the beneficiary meets the requirements of the position.” In response, counsel stated that the petitioner had already submitted the required evidence.

In the March 2007 RFE, the director instructed the petitioner to “[p]rovide a detailed explanation as to the requirements for the position offered, and how the beneficiary meets those requirements.” In response, in a new letter dated June 1, 2007, [REDACTED] stated: “any person competent to perform the duties and acceptable to local community can be appointed a Granthi. He should of course be a baptized Sikh of blameless character, leading a simple life of a householder according to the ideals and traditional code of Sikh conduct.” The web page at <http://facweb.furman.edu/dept/rel/pluralism/scsikh.html>, reproduced in the record, indicated: “There is no ordained ministry. Anyone who knows the scriptures and history can serve” as a “[r]eligious leader.” More generally, the document stated: “Gurdwaras in both the United States and India have no formal clergy and leave the services open to anyone who wants to lead them.”

In denying the petition, the director acknowledged the submitted documents, but stated that the record did not contain sufficient evidence to establish that the materials “qualify the beneficiary as a Granthi, Preacher, or Teacher.” On appeal, the petitioner maintains that the beneficiary holds the necessary qualifications.

The record indicates that there is no formal minimum qualification to serve as a *granthi*. Factors such as familiarity with holy texts can be difficult to gauge objectively, and it would properly fall within the purview of a given congregation to judge the beneficiary’s qualifications in that area. The record indicates that the Sikh tradition lacks any ceremony analogous to ordination, and therefore the petitioner cannot be expected to submit evidence of this kind. The apparent absence of strict guidelines regarding who may serve as a *granthi* should not be held against the petitioner or the beneficiary. Upon consideration, the AAO withdraws the director’s finding that the petitioner has not established the beneficiary’s qualifications as a *granthi*.

The petitioner has overcome the grounds for denial stated in the director’s decision, and the AAO’s appellate review of the record has revealed no new grounds for denial. The burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. The petitioning entity passed a site visit conducted on March 14, 2008, and therefore appears to have met the requirements set forth in a memorandum from Michael Aytes, Associate Director, Domestic Operations, and [REDACTED] Division Chief, Office of Fraud Detection and National Security, *Standard Operating Procedures for Religious Worker Petition Anti-Fraud Enhancements* (July 5, 2006).

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