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U.S. Citizenship
and Immigration
Services

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FILE:

WAC 07 149 51750

Office: CALIFORNIA SERVICE CENTER

Date: **NOV 24 2008**

IN RE:

Petitioner:
Beneficiary:



PETITION: 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.

JF Grissom
John F. Grissom, Acting Chief
Administrative Appeals Office

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

The petitioner is a Sikh organization. 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 an assistant priest. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

On appeal, counsel asserts that the director “rejected overwhelming evidence of [the] alien’s duties and narrowly confined itself to [the] beneficiary’s kitchen duties.” The petitioner submitted copies of previously submitted documentation in support of the appeal.

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 issue presented on appeal is whether the petitioner established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker.” The regulation 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.”

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on May 1, 2007. Therefore, the petitioner must establish that the beneficiary was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

The regulation at 8 C.F.R. § 204.5(m)(2) defines minister as:

[A]n individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

In its April 15, 2007 letter accompanying the petition, the petitioner stated that the beneficiary was currently serving as its assistant priest pursuant to an R-1, nonimmigrant religious worker visa, and that it wished to sponsor him for “immigrant status so that he may continue to serve our Gurdwara as Assistant Priest for the indefinite future.” The petitioner further stated that the beneficiary “is ‘duly authorized’” to work as a minister “because he graduated from a religious university in India,” and that his “duties have been consistent with those of a minister.” The petitioner stated that the beneficiary will continue to perform the following duties:

- Officiate Guru Granth Sahib (Sikh Scripture) Parkash and morning prayer.
- Officiate evening and closing ceremony.
- Officiate Sunday morning services, daily evening services, and Kirtan (Gurbani hymns contained in Guru Granth Sahib).
- Officiate house opening religious ceremony.
- Officiate the Sehaj Path and Akhan Path (reading of Guru Granth Sahib from beginning to end, which contains 1430 pages).
- Perform religious marriage ceremonies in accordance with the Sikh religion customs and traditions.
- Perform baptism ceremonies to baptize Sikhs in the Khalsa Brotherhood.
- Perform prayer and other religious services at the birth of a child.
- Perform last prayers and other religious services on behalf of the deceased.

The petitioner submitted a copy of a "baptism ceremony" indicating that the beneficiary was baptized on April 13, 1981, and a copy of an April 4, 1984 certificate indicating that the beneficiary had studied at the Gurdwara Rakab Banj New Delhi from May 1980 to April 1984, and was "qualified to perform the duties of a priest." The petitioner submitted canceled checks, reflecting that it paid the beneficiary approximately \$458 in December 2006 and January 2007, and approximately \$460 in February 2007. The petitioner submitted unsigned and undated copies of California Forms DE6, indicating that it paid the beneficiary \$400 for the quarter ending March 2006, \$1,200 for the quarter ending June 2006, \$1,300 for the quarter ending September 2006, and \$1,000 for the quarter ending December 2006.

The petitioner provided copies of pay stubs for the beneficiary, indicating that he received a \$400 salary approximately once a month for work performed from April to August 2006; and \$500 for work performed in September, October and December 2006, and January and February 2007. The petitioner also provided copies of the beneficiary's Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return, for 2005, including a copy of IRS Form 1099-MISC, Miscellaneous Income, reporting nonemployee compensation of \$5,875; and a copy of the beneficiary's IRS Form 1040A for 2006, reporting wages of \$6,000. We note that although the beneficiary reported wages of \$6,000, the accompanying copy of IRS Form W-2, Wage and Tax Statement, issued by the petitioner in 2006, indicated that it paid the beneficiary wages of \$3,900. This amount is consistent with the wages reported on California Form DE6.

In a request for evidence (RFE) dated June 21, 2007, the director instructed the petitioner to provide the following information:

Payroll Summary: Submit copies of the petitioner's IRS Forms W-3 (Transmittal of Wage and Tax Statements) evidencing wages paid to employees for the two year period of the beneficiary's qualification.

Work History: Provide evidence of the beneficiary's work history for the two year period prior to the filing date. Provide experience letters written by the previous and current employers that include a breakdown of duties performed in the religious occupation for an average week. Include the employer's name, specific dates of employment, specific job duties, number of hours worked per week, form and amount of compensation, and level of responsibility/supervision. In addition, submit evidence that shows monetary payment, such as pay stubs or other items showing the beneficiary received payment . . . If any work was on a volunteer basis, provide evidence to show how the beneficiary supported himself during the two-year period or what other activity the beneficiary was involved in that would show support.

Tax Documents: Submit copies of the beneficiary's IRS Forms W-2 (Wage and Tax Statement) for the two year period prior to the filing date.

Ordination: It is unclear whether the beneficiary will be working in a vocational capacity or a ministerial capacity. Will the beneficiary [be] in a leadership capacity in the petitioner's organization? Please clarify whether the beneficiary has authorization to conduct religious worship and perform other services usually performed by members of the clergy, in addition to religious worship and services performed by all clergy members. IE; [sic] weddings, baptisms, funerals. If so, submit evidence to show that the

beneficiary has been ordained and/or given such authorization. Also provide a list of the requirements for ordination/authorization.

In its September 10, 2007 response, the petitioner stated:

the founder of the Sikh religion, established the institutions *Pangat* (eating together) and *Sangat* (praying together). These institutions are central tenets of the religion and symbolize human equality, in that everybody eats together and prays together regardless of gender, race, color, creed, national origin, or religious belief. These tenets are the foundations of the Sikh religion and are practiced and respected in every Sikh Gurdwara (church).

In the Sikh religion, assisting in the kitchen to prepare and serve food is considered a very respectable and honorable deed. [The beneficiary] coordinates and assists in the preparation and distribution of sacred food; this is one of his major responsibilities. His other duties include participation in the morning and evening services along with other priests.

The schedule and duration of regular services is as follows:

1. Monday through Saturday

(a) Morning Services – From 5:00 AM to 7:00 AM

Morning Services start with the exposition (Parkash) ceremony of [REDACTED] (Sikh Holy Scripture), and recitation of morning banies, followed by [REDACTED] (Singing of Hymns from Sri Guru Granth Sahib) by [REDACTED] (three associate priests), and sermon by Head Priest [REDACTED]. The morning service concludes with a prayer.

(b) Evening Services – From 5:30 PM to 7:30 PM

Evening Services start with recitation of [REDACTED], followed by [REDACTED] and sermon by Head Priest [REDACTED]. The evening service concludes with a prayer and closing ceremony. At the end of the closing ceremony, [REDACTED] is taken to the resting room for the night. In the Sikh religion, the Sikh Scripture is respected and treated as living Guru.

2. Sunday Schedule

(a) Morning Service – From 5:00 AM to 1:00 AM [sic]

The Sunday morning Service starts with the Parkash ceremony of [REDACTED] and recitation of morning banies. This portion of the service concludes at 7:00 AM. Services resume at 8:00 AM with the recitation of [REDACTED] b, followed by a children's program, Kirtan . . . , and sermon by Head Priest [REDACTED]. The morning service concludes with a prayer at 1:00 PM.

(b) Evening Service – No Evening Service

Sehaj Path and Akhand Path are special services in which the priests read the Guru Granth Sahib, containing 1430 pages, from beginning to the end. This program starts Friday morning and concludes Sunday morning (48 hour continuous reading of Scripture). All priests, including [the beneficiary], participate in this program by reading the Holy Scripture in two hour shifts.

Other Special Services are provided on an as-needed basis and, for [the beneficiary], would include the following:

- Assist in house opening religious ceremonies;
- Assist in performing marriage ceremonies in accordance with the Sikh religion customs and traditions;
- Assist in performing prayer and other religious services at child birth;
- Assist in performing baptism ceremonies to baptize Sikhs in the Khalsa Brotherhood; and
- Assist in performing last prayers and other religious services on behalf of the deceased person.

The petitioner provided photographs that it stated were of the church facility and of the beneficiary with other priests and worshippers during various ceremonies, and further stated that the beneficiary was provided with free room and board as is customary for priests living at the Gurdwara. The petitioner also stated that it had provided the other requested information with the petition.

In finding that the petitioner had failed to establish that the beneficiary worked continuously in full-time religious work during the two-year qualifying period, the director noted that the petitioner failed to provide evidence of the beneficiary's ordination or authorization to perform duties of the clergy and that the petitioner had not submitted evidence that the position was recognized as a religious occupation related to a traditional religious function in the denomination.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

Section 101(a)(27)(C)(iii) of the Act provides that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he

was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

The director's determination that the position of priest or associate priest is not a religious occupation or vocation cannot stand. The statute and regulation clearly identify ministerial work as a religious vocation. The proffered position of associate priest and the duties described as associated with that position fall within the parameters of ministerial work.

Nonetheless, the petitioner has not established that the beneficiary continuously worked as an associate priest for the two-year period immediately prior to the filing of the visa petition or that he was qualified for the proffered position.

In its April 15, 2007 letter accompanying the petition, the petitioner stated that the duties of the proffered position, and those performed by the beneficiary during the qualifying period, included officiating at religious ceremonies and performing wedding and baptism ceremonies, performing prayer and other religious services upon the birth of a child, and performing last prayers and religious ceremonies for the deceased. However, it is clear from the petitioner's September 10, 2007 response to the director's RFE, that the beneficiary only assisted in these duties, and that a major part of his responsibilities included preparation and distribution of food in the Gurdwara. The beneficiary's food service responsibilities, while described by the petitioner as "major," were not, however, included in the list of duties outlined by the petitioner in its April 2007 letter. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Additionally, the petitioner did not provide a detailed schedule of the work performed by the beneficiary during the qualifying period as requested by the director. The petition may be denied on this ground alone. 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).

Further, the petitioner submitted no documentation that the beneficiary was ordained or otherwise authorized by the denomination to perform religious duties normally performed by authorized members of the clergy. The petitioner submitted a copy of a certificate indicating that the beneficiary had "studied at Religious Educational at Gurdwara Rakab Ganj" for four years and was "qualified to perform duties of a priest;" however, it submitted no documentation that completion of these studies also *authorized* the beneficiary to serve as a priest.

Finally, the petitioner failed to provide documentary evidence that it had paid the beneficiary for his full-time services throughout the two-year period. The beneficiary's 2005 IRS Form 1099-MISC and federal tax return indicate that he received \$5,875 in nonemployee income from the petitioner in 2005. The

beneficiary's 2006 federal tax return indicates that he received \$6,000 in wages in 2006; however, the petitioner's tax documentation indicates that it only paid the beneficiary \$3,900 for the year. The petitioner submitted pay stubs indicating that it paid the beneficiary \$500 in January and February 2007, but failed to provide evidence that it compensated the beneficiary at any time subsequent to that date, despite the director's instruction in the RFE to do so. As noted, failure to provide requested information is, by itself, grounds to deny the petition. 8 C.F.R. § 103.2(b)(14).

The evidence therefore does not establish that the beneficiary was continuously engaged in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition. The petitioner failed to provide sufficient documentation regarding the duties performed by the beneficiary during the qualifying period, failed to provide the requested documentation to establish that the beneficiary was qualified for the position offered, and failed to provide documentation to establish that the beneficiary was compensated for his work with the petitioner throughout the qualifying period.

Beyond the decision of the director, the petitioner has not established that it is a bona fide nonprofit religious organization.

The regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

(3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code (IRC) of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, if applicable, and a copy of the organizing instrument of the organization, which contains a proper dissolution clause and which specifies the purposes of the organization.

The petitioner asserted in its April 15, 2007 that it was "a bona fide nonprofit organization" because it had "obtained tax exempt status from the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code." However, the petitioner submitted no documentation to establish its tax-exempt status granted by the IRS or any of the documentation required by 8 C.F.R. § 204.5(m)(3)(i)(B). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in

these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Accordingly, the petitioner has failed to establish that it is a bona fide nonprofit religious organization. The petitioner has also failed to establish that it has extended a qualifying job offer to the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

In its April 2007 letter, the petitioner stated that it was offering the beneficiary employment “on the same terms of his current employment under the R1 status.” The petitioner submitted no documentation to establish the terms of the beneficiary’s employment and did not clearly state how the beneficiary would be solely carrying on the vocation of minister or how he would be remunerated for his work. Accordingly, the petitioner has failed to establish that it has extended a qualifying job offer to the beneficiary.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.