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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: NOV 24 2008  
WAC 07 056 52665

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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:

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.

A handwritten signature in cursive script, appearing to read "John F. 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 on appeal. The appeal will be dismissed.

The self-petitioning alien seeks classification 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 Buddhist monk at Wat Lao Siriwathanaram Buddhist Temple (WLSBT). The director determined that the petitioner had not established that he is qualified to engage in a religious vocation or occupation as a monk.

On appeal, the petitioner submits evidence that he claims establishes his ordination and apologizes for failing to submit the requested documents.

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 sole issue raised in the director's decision in these proceedings is whether the petitioner established that he is qualified to engage in a religious vocation or occupation as a monk.

The regulation at 8 C.F.R. § 204.5(m)(3)(ii)(D) requires the petitioner to demonstrate that "if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation."

Along with the Form I-360, the petitioner submitted a letter dated November 17, 2006, from ██████████ ██████████ president of WLSBT, who indicated that the petitioner was ordained at Wat Sibounheuang Temple, in Khongsedon, Saravan, Laos on August 1, 1992, and has served as a monk for over 13 years. ██████████ a also indicated that the petitioner was authorized to conduct and lead religious ceremonies, to teach and counsel the faithful and to perform all the other Lao traditional and cultural activities such as blessing of marriages, homes and funerals.

On April 12, 2007, the director issued a Request for Evidence (RFE) instructing the petitioner to submit his ordination certificate to support the claim that he was ordained on August 1, 1992. The director noted that the minimum age for ordaining a Buddhist monk was 20 years; however, the petitioner was approximately 14 years of age in 1992. As such, the petitioner was also instructed to submit evidence demonstrating how, at the age of 14, he was qualified to be ordained.

In response to the RFE, the petitioner stated that he was ordained as a “novice monk” on August 1, 1992, and ordained as a “full monk” on April 6, 1998. The petitioner submitted a copy of a document entitled “Certification of Ordination;” however, this clearly is not a certificate of ordination as it issued by Lao Buddhist Monks in the USA, Inc., on January 6, 2006, well after his claimed ordination in 1992. This document contains information relating to the 1992 ordination, and additional information relating to a claimed ordination on April 6, 1998 at Wat Sibounheung in Saravan, Laos. Neither of the signature fields for the two ordinations is signed. While this 2006 document may be a recording of the petitioner’s claimed ordination, it is not the actual ordination certificate requested by the director. 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).

The director, in denying the petition, noted that the certification was insufficient as it not issued by a religious authorized organization in Laos and did not contained a signature of the authorizing official.

On appeal, the petitioner submits a Certificate of Ordination certified on December 2, 2002, from the Buddhist Monks of Laos of Chanthaboury along with English translation. The petitioner states that the 2006 Certificate of Ordination from the Lao Buddhist Monks in the USA, Inc. was given to him after his arrival in the United States by the Buddhist Monks in the USA, Inc., and asserts that he mistakenly provided that document in response to the RFE. However, the AAO is now precluded from considering this certificate on appeal.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director. Based on the record before the director, the petitioner failed to submit requested evidence. On this basis alone, the petition may not be approved. 8 C.F.R. § 103.2(b)(14). In addition, because the petitioner failed to provide the requested evidence of ordination, he failed to establish that he is qualified to engage in a religious vocation or occupation as a monk..

Beyond the director's decision, the petition may not be approved because the petitioner has not established that he has been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

The regulation at 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 statute states at section 101(a)(27)(C)(iii) 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.

██████████, in his letter of November 17, 2006, indicated that the petitioner initially performed religious work at Wat Lao Saysettha Temple in Santa Rosa, California from February 24, 2004 to March 31, 2005.<sup>1</sup> The petitioner commenced employment at WLSBT on April 7, 2005. Mr. ██████████ further indicated that WLSBT "will be responsible for all compensation including room and board, clothing, and health insurance and traveling expenses" and that the petitioner will be residing at the temple and all expenses will be provided by the members.

The prospective employing organization has indicated that it would provide compensation *in the future* for the petitioner. However, no evidence has been provided to establish how the petitioner was remunerated or compensated during the period of employment at WLSBT from April 7, 2005 to the date

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<sup>1</sup> The petitioner is the beneficiary of an R-1 nonimmigrant visa that authorized him to work at Wat Lao Saysettha Temple beginning in 2004.

of filing this petition and from December 21, 2004 through March 31, 2005 while employed at Wat Lao Saysettha Temple in Santa Rosa, California.

The petition also may not be approved because the petitioner has not established that he has a qualifying job offer from a qualifying religious organization.

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

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

The petitioner has not submitted evidence that clearly establishes the terms or payment or other compensation for his services. In a letter dated November 17, 2006 letter, [REDACTED], president of WLBST, asserts that "WLBST will be responsible for all compensation including room and board, clothing, health insurance, and traveling expenses. [The petitioner] will be residing at the temple, and all expenses will be provided by the members." However, in a letter dated December 3, 2006, [REDACTED], the Secretary of Lao-American Buddhist Monks Organization in the U.S.A., claims that "[w]e, the Lao Buddhist will provide all of his necessities of live such as health insurance, life insurance, room, food, clothing, miscellaneous expenses and a monthly payment for all of his other needs." Accordingly, it is unclear whether WLBST or Lao-American Buddhist Monks Organization in the U.S.A. will be responsible for the terms of compensation. In addition, although Lao-American Buddhist Monks Organization in the U.S.A. asserts that the petitioner will be given "miscellaneous expenses and a monthly payment," the organization failed to specify the amount of money that will be provided to the petitioner for expenses and for a monthly payment. 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 not established that he has a qualifying job offer within the meaning of 8 C.F.R. § 204.5(m)(4).

In addition, if the assertions of the organization Lao-American Buddhist Monks Organization in the U.S.A. are true, and the petitioner is to be provided "miscellaneous expenses and a monthly payment," then the petitioner has not established that it has the ability to pay the proffered wage.

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.

Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner provided a Bank One business checking statement for the period ending February 15, 2006 for WLSBT reflecting an ending balance of \$32,162.69, and an undated letter from a representative of Bank One, indicating WLSBT opened an account in 1995. The petitioner also provided a transaction history printout and a letter from a representative of Chase reflecting current balance of \$34,295.67 as of October 3, 2006 for WLSBT.

The petitioner, however, has not submitted annual reports, federal tax returns, or audited financial statements that would illustrate the assets and liabilities of the petitioner and permit a conclusive determination on its ability to pay any proffered wage or "cost of living," in accordance with 8 C.F.R. § 204.5(g)(2). The petitioner is free to submit other kinds of documentation, but only *in addition to*, rather than *in place of*, the types of documentation required by the regulation. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Accordingly, the petitioner has not demonstrated that WLSBT has the ability to pay the proffered wage.

The appeal will be dismissed 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. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.