

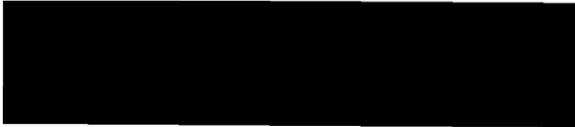
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE:

WAC 07 242 52933

Office: CALIFORNIA SERVICE CENTER

Date: **OCT 08 2009**

IN RE:

Petitioner:

Beneficiary:



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.

*M. Bladnick*  
Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) remanded the matter for consideration under new regulations. The director again denied the petition and, following the AAO's instructions, certified the decision to the AAO for review. The AAO will affirm the director's decision.

The petitioner is a 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 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. In addition, the director determined that the petitioner had not provided sufficient evidence regarding its finances.

In response to the certified denial, the petitioner submits a letter from a temple official and documentation of the beneficiary's activities after the petition's filing date.

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 September 30, 2009, 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 September 30, 2009, 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)(4) requires the petitioner to show that the beneficiary has been working as a minister or in a qualifying religious occupation or vocation, either abroad or in lawful

immigration status in the United States, continuously for at least the two-year period immediately preceding the filing of the petition. The petition was filed on July 30, 2007. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work throughout the two years immediately prior to that date.

The first issue in this proceeding concerns the beneficiary's claimed prior employment. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(11) states:

*Evidence relating to the alien's prior employment.* Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work, must have occurred after the age of 14, and if acquired in the United States, must have been authorized under United States immigration law. If the alien was employed in the United States during the two years immediately preceding the filing of the application and:

- (i) Received salaried compensation, the petitioner must submit IRS documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of income tax returns.
- (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.
- (iii) Received no salary but provided for his or her own support, and provided support for any dependents, the petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS.

If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

The beneficiary entered the United States as an R-1 nonimmigrant religious worker on September 7, 2006. He therefore spent most of the two-year qualifying period outside the United States, and the petitioner must account for the beneficiary's experience both in the United States and abroad.

On the Form I-360 petition, the petitioner showed the same street address for the beneficiary as for the petitioning entity.

In a July 27, 2007 letter accompanying the initial filing of the petition, [REDACTED], then President of the petitioning congregation, stated:

[The beneficiary] received his specific religious training at the Gurdwara Sri Guru Singh Sabha in New Delhi, India from 2001 to 2006. [The beneficiary] was an official member of the church performing daily recitation serving the congregation by reading the verses of the scripture known as Kirtan. Please see the letter from the President of Gurdwara Sri Guru Sing[h] Sabha confirming [the beneficiary's] membership with the church attached hereto as **Exhibit F**.

He has worked as priest for the [petitioner] since September 2006.

Exhibit F is a letter on untranslated [redacted] letterhead. The name "[redacted]" and the title "Pressident" (*sic*) are printed below the body of the text, but the signature appears to read [redacted], followed by the title [redacted]. The letter identifies the beneficiary as one of three individuals who have been "performing daily recitations with us since 2001 at Gurdwara Sri Guru Singh Sabha" in New Delhi. The letter is undated, but its references to the beneficiary's efforts to obtain an R-1 nonimmigrant visa allow us to date the letter to mid-2006 because that visa was issued on August 30, 2006.

On September 26, 2007, the director issued a request for evidence (RFE), instructing the petitioner to submit "evidence of the beneficiary's work history beginning 07-30-05 and ending 07-30-07," including a detailed weekly schedule of duties and "documentary evidence that proves the beneficiary has recently performed weddings, funerals, religious services, and other duties performed by the clergy." The director stated that letters attesting to the beneficiary's past employment must come from the locations where the employment occurred. The director also instructed the petitioner to "[s]ubmit photographs providing evidence of the beneficiary's living quarters at the church" as well as "well-documented evidence that it provided all of the beneficiary's living expenses during 2005, 2006, and 2007."

The petitioner submitted an unsigned, uncertified copy of the beneficiary's 2006 Internal Revenue Service (IRS) Form 1040 income tax return. The beneficiary stated that he received a total of \$1,400 for the year. He stated: "The money was donated by the devotees . . . not from the church management." Also on his tax return, the beneficiary listed the street address of the petitioning temple as his home address.

In a statement typed in all capital letters, [redacted] stated:

BENEFICIARY PERFORMS ALL THE SERVICES ALONGWITH [*sic*] THREE OTHER PEOPLE. THEY ARE PROVIDED BY THE CHURCH WITH FOOD AND SHELTER TILL THEY ARE GRANTED A RELIGIOUS WORKER VISA.

. . . BENEFICIARY HAS BEEN SUPPORTED BY THE CHURCH IN THE SENSE HE WAS GIVEN FOOD AND SHELTER DURING THIS PERIOD. HE HAS ALSO BEEN GIVEN HONORARIUM BY THE DEVOTEES FOR WHOM OR AT WHOSE HOUSES HE PERFORMED.

. . . . THE BENEFICIARY LIVES IN THE TEMPLE AND THE ADDRESS IS GIVEN ABOVE.

The only address provided in the quoted letter is the street address of the petitioning temple. [REDACTED] also claimed that the beneficiary “HAD NO WORK PERMIT SO NO SALARY WAS PAID TO HIM,” although the beneficiary’s R-1 nonimmigrant status authorized him to work and receive compensation. The petitioner did not submit documentary evidence of the performance of the beneficiary’s duties, or explain the absence of such evidence.

The petitioner submitted photographs of the building exterior and the area where it conducts worship services. The petitioner did not, however, submit the specifically requested “photographs . . . of the beneficiary’s living quarters at the church,” nor did the petitioner explain why it failed to submit these photographs. The petitioner, therefore, failed to provide evidence that the beneficiary actually lived at the petitioner’s address as both the petitioner and the beneficiary had claimed.

The director denied the petition on January 15, 2008, stating:

The petitioner did not submit the requested evidence to show remuneration to the beneficiary throughout the required qualifying period. Public records also indicate the beneficiary lives at a privately owned single family residence . . . and not at the address for the petitioning church. Due to this discrepancy, US CIS requested the petitioner to submit documentary evidence of the beneficiary’s address or addresses since he entered the United States. The petitioner submitted another statement indicating the beneficiary lives at the petitioning church’s address. The petitioner did not submit the requested documentary evidence to demonstrate they have provided the beneficiary housing and support.

On appeal, counsel stated: “The beneficiary has been provided with housing by the [petitioner] as an in-kind service as agreed to in the job offer. From the time [the beneficiary] entered the U.S. on September 7, 2006 to the present time, he has lived . . . with his brother who is a member and vice president of [the petitioning entity].”

Counsel’s explanation fails to resolve the issues that the director raised. By signing the Form I-360 petition, an official of the petitioning entity attested under penalty of perjury that the “petition and the evidence submitted with it is all true and correct.” The petitioner indicated repeatedly that the beneficiary resided at the same street address as the petitioning facility itself (not at the home of one of the petitioner’s officials). [REDACTED] stated unambiguously that “THE BENEFICIARY LIVES IN THE TEMPLE” and referred to the temple’s street address and did not claim, imply, or otherwise indicate that the beneficiary lived at any other location.

Furthermore, the admission that the beneficiary resides at the home of a close relative does not support the petitioner’s claim that the beneficiary resides there because of his employment. We see

no reason to believe that the beneficiary's brother allows the beneficiary to live with him only because he works at the petitioning temple, and not because the two are closely related. Given the petitioner's repeated false claims about where the beneficiary resided, the petitioner is not entitled to any credence on this point. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92.

The petitioner submitted a copy of a marriage certificate dated November 25, 2007, and copies of several checks that the petitioner issued to the beneficiary in late 2007 and early 2008. None of these materials indicate that the petitioner employed the beneficiary during the two-year qualifying period that ended July 2007, because all of the materials date from after that period. We note that the checks show no markings of processing for payment.

On December 15, 2008, the AAO remanded the petition for consideration under new regulations. On February 4, 2009, the director advised the petitioner that the director would deny the petition unless the petitioner complied with several new evidentiary requirements. The director instructed the petitioner to "submit IRS documentation that the alien received a salary," "IRS documentation of the non-salaried compensation if available," or documentary evidence of alternative support.

In response, the petitioner submitted a second copy of [REDACTED] letter, discussed earlier in this decision. While the previously submitted copy was undated, the new copy is dated April 15, 2006. It is not clear who altered the document to show this date, or whether that person had personal knowledge that the date was correct. This single, altered letter is not comparable to the types of evidence required by 8 C.F.R. § 204.5(m)(11) and its subsections.

The petitioner submitted a partial copy of the beneficiary's 2007 income tax return, indicating that the beneficiary received \$6,000 in "gross receipts" that year. The document is not IRS-certified as required by 8 C.F.R. § 204.5(m)(11)(i). An uncertified copy of a tax return is not "IRS documentation," because the IRS provided only the blank form; there is no evidence that the IRS has seen any of the information that the beneficiary later added to that form.

The director again denied the petition on June 2, 2009, and certified the decision to the AAO for review. In that decision, the director repeated the finding that the beneficiary did not reside at the petitioning temple, despite the petitioner's repeated claims that the beneficiary did live there.

In response to the certified decision, [REDACTED] of the petitioning temple, stated that the beneficiary "was moved to" his brother's house because "we did not have enough room for all the priests in the Church." This fails to explain why the petitioner repeatedly claimed that the beneficiary did, in fact, live at the temple itself, or why the beneficiary made the same claim on his 2006 tax return. The petitioner never made any effort to disclose the beneficiary's true address until after it

learned that the director already knew it. This does not speak well of the petitioner's credibility or candor.

We note that the petitioner has submitted an uncertified copy of the beneficiary's 2008 income tax return, dated April 9, 2009. Even on this very recent document, the beneficiary lists the temple's address as his "home address." If the temple is not the beneficiary's "home address" (as the petitioner has now conceded), then the beneficiary has repeatedly provided false information to the IRS.

Because the petitioner has stated that the beneficiary's compensation includes living accommodations, the beneficiary's residential address is a material issue in this proceeding. Also, the petitioner has repeatedly failed to comply with the director's requests for specific documentary evidence regarding the beneficiary's past experience. The petitioner has produced only after-the-fact claims about the beneficiary's work for the petitioning temple, not supported by evidence from the time period in question. The petition, therefore, rests on the credibility of the petitioner's claims. Here, as we have already explained, the petitioner has seriously undermined that credibility. Therefore, the petitioner has presented nothing better than the unsupported claims of parties that are known to have made false statements in support of this petition.

The petitioner's failure to provide true and correct information regarding material matters of fact is grounds for denial of the petition. Section 204(b) of the Act, 8 U.S.C. § 1154(b), provides for the approval of immigrant petitions only upon a determination that "the facts stated in the petition are true." False, contradictory, or unverifiable claims inherently prevent a finding that the petitioner's claims are true. *See Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Systronics Corp. v. I.N.S.*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988).

The second ground for denial concerns the manner of the beneficiary's compensation. 8 C.F.R. § 204.5(m)(10) states:

*Evidence relating to compensation.* Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

In the initial letter, [REDACTED] stated that the beneficiary "will be compensated for his services by a monthly salary of \$400, plus free housing, food, and other necessary living expenses. [The beneficiary] will live at the church facility." We have already discussed the problems surrounding this last claim.

In the September 2007 RFE, the director requested evidence, including IRS documentation, concerning the beneficiary's living expenses and the petitioner's ability to meet those expenses. In response, the petitioner submitted self-prepared income statements claiming income over \$60,000 per year.

In the first denial notice, the director stated that the petitioner had not provided any documentary evidence to show that it has supported, or will be able to support the beneficiary. On appeal, the petitioner submitted a letter from a local bank, stating that, as of January 25, 2008, the petitioner carried a bank balance of \$1,083.41 as well as a certificate of deposit worth \$20,000.00. A bank statement from another bank showed a balance of \$4,636.86 as of January 31, 2008.

Following the AAO's remand order, the director quoted the regulation at 8 C.F.R. § 204.5(m)(10). In response, the petitioner indicated that its "history of deposits [is] adequate to cover [the petitioner's] monthly expenses of \$4,000 per month." The petitioner submitted no first-hand documentation to support this claim.

In the certified denial notice, the director cited the petitioner's failure to submit sufficient financial documentation. In response, the petitioner submitted uncertified copies of tax returns that the beneficiary filed after the petition's filing date, but no new evidence to show the petitioner's finances.

When we consider the petitioner's incorrect statements regarding the beneficiary's living arrangements, we cannot give much weight to the petitioner's unsupported claims that its income is sufficient to support the beneficiary at the level asserted in the original petition documents. We agree with the director's finding that the petitioner has not met its burden of proof in this regard.

In both denial notices, the director stated:

[T]he petitioner submitted a letter that states: "BENEFICIARY PERFORMS ALL THE SERVICES ALONGWITH THREE OTHER PEOPLE. THEY ARE PROVIDED BY THE CHURCH WITH FOOD AND SHELTER TILL THEY ARE GRANTED A RELIGIOUS WORKER VISA." This statement implies the petitioner is not making a valid job offer for permanent employment. This statement indicates the church will only provide food and shelter until the beneficiary is granted an immigration benefit. The petitioner has implied the job offer for the beneficiary has been made for the sole purpose of obtaining an immigration benefit.

There is a more benign interpretation of the petitioner's remarks. Specifically, the petitioner may have meant that the beneficiary and other aliens receive only food and shelter for the time being, and that they will begin to receive monetary compensation once their immigration status permits it. While the record contains serious credibility issues, we do not share the director's conclusion that the petitioner has supposedly admitted that it is merely pretending to employ the beneficiary and others in order to help them obtain visas. While we are upholding the director's denial of the petition, we do not base this decision, in whole or in part, on the petitioner's phrase which caused the director such concern.

The AAO will affirm the certified denial 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 director's decision of June 2, 2009 is affirmed.