

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

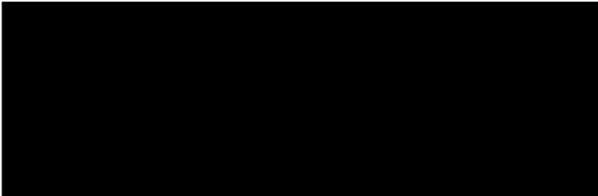
**PUBLIC COPY**

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



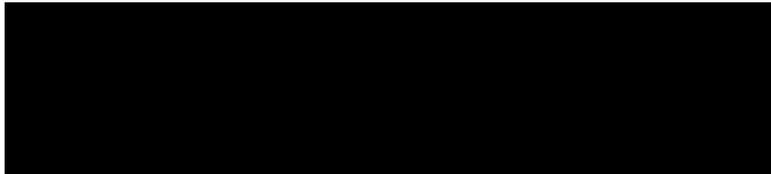
**U.S. Citizenship  
and Immigration  
Services**

C1



FILE: WAC 07 150 53458 Office: CALIFORNIA SERVICE CENTER Date: **APR 09 2010**

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:

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.

Perry Rhew  
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 (AAO) on appeal. The AAO will withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, the AAO will remand the petition for further action and consideration.

The petitioner, based in Corona, New York, describes itself as the North American regional headquarters of "a worldwide mission" belonging to "the family of [REDACTED] and [REDACTED]". 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 A'carya, or minister, of the petitioner's mission in Lake Hughes, California. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits documentation of the beneficiary's compensation and his presence at the mission.

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, 2012, 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, 2012, 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 U.S. Citizenship and Immigration Services (USCIS) 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 USCIS regulation at 8 C.F.R. § 204.5(m)(11) reads, in part:

(11) *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.

The petitioner filed the petition April 23, 2007. On the Form I-360 petition, the petitioner indicated that the beneficiary resided at the petitioner's mission in Lake Hughes. The record indicates that the beneficiary entered and departed the United States on various occasions before and during the two-year qualifying period, most recently entering on January 20, 2007. He therefore was outside the United States for part of the qualifying period.

In a letter accompanying the petitioner's initial submission, [REDACTED] of the petitioning organization, stated that the beneficiary

was ordained as an A'carya of our denomination in 1990. . . . Since then he has worked full time as a minister in Nepal, India, and in North America. . . .

[The beneficiary], being a renunciate missionary, has taken a vow of poverty and can easily be supported within our budget. As is the case with other existing monks and nuns assigned here, [the beneficiary] will receive no salary; however, [the petitioner] and its qualified subordinates will provide for all of his maintenance and upkeep (which includes room, board, medical care and travel expenses).

On June 23, 2008, the director requested "evidence of the beneficiary's work history beginning April 23, 2005 and ending April 23, 2007." The director also instructed the petitioner to "[s]ubmit evidence that the petitioner has been providing compensation for the beneficiary's services. Evidence may include (but is not limited to) W-2 forms, check stubs, beneficiary's tax returns, evidence of housing,

evidence of stipends or allowances for food, clothing, transportation, air travel, medical, insurance, etc.” (emphasis in original). The director requested a range of evidence, and did not require the submission of any one particular document.

In response, [REDACTED] stated that the petitioner has no payroll records because the petitioner “does not have any paid workers in the USA” apart from certain exceptions unrelated to the petition. [REDACTED]’s letter included a section with the heading “Work History,” but the information in that section described the beneficiary’s daily schedule and routine duties, with little information about the history of the beneficiary’s claimed work except for the assertion that he “organized retreats in November 2005, May 2006 and March 2007.” [REDACTED] indicated that the beneficiary entered the United States in 2003 as an R-1 nonimmigrant religious worker, and “traveled to India for about a month for a minister’s meeting and returned on January 20, 2007.”

Regarding the beneficiary’s compensation, [REDACTED] stated:

Frugality is a way of life for our ordained Acaryas (ministers). . . . [The petitioner’s Los Angeles subordinate] is the titled owner of the property [in Lake Hughes] and has provided for all [of the beneficiary’s] personal upkeep, which includes room, board, clothing and travel expenses (arrangements for medical care are handled privately on a case-by-case basis), for as long as he was there. He received no stipends. Further, as no wages or salaries are paid to our Ministers, they are neither required to nor do they file any IRS forms.

The petitioner documented its ownership of the Lake Hughes property, and submitted a list of its “Lake Hughes Property Expenses for 2007,” including ten checks for “Minister/Volunteer Maintenan[ce],” totaling \$12,422.49. The petitioner did not, however, provide primary evidence (such as bank records) to substantiate the list of expenses, nor did the petitioner show that the claimed maintenance payments went to the beneficiary. The petitioner submitted no receipts to show the purchase of food, clothing, or other necessities for the beneficiary.

The director denied the petition on October 23, 2009. The director found that the petitioner had submitted no evidence that the petitioner carries medical insurance for the beneficiary (as the petitioner originally claimed) or has paid any of the beneficiary’s medical expenses. The director also found that the evidence of the petitioner’s ownership of property in Lake Hughes “is evidence of the petitioner’s capacity to provide the beneficiary with housing, not evidence of housing actually provided.” The director stated that the beneficiary’s vow of poverty does not exempt the petitioner from submitting verifiable documentary evidence to show that it has been supporting the beneficiary. The director stated that the petitioner did not submit copies of “a California ID card documenting the beneficiary’s residence, correspondence received by the beneficiary at the claimed location, [or] newsletters from the religious organization discussing the religious services performed by the beneficiary at the location.” The director had not previously requested those specific types of evidence.

On appeal, the petitioner submits various exhibits to establish the beneficiary's presence at the Lake Hughes mission and the petitioner's material support of the beneficiary. A California driver license, issued to the beneficiary on January 14, 2004, shows that the beneficiary began using the Lake Hughes address years before the petitioner filed the petition.

The petitioner also submits copies of bank statements from its account and from the beneficiary's account. The statements show numerous checks from the petitioner's account (payable to "Cash"), that match, in amount and in time, corresponding deposits into the beneficiary's account between December 2004 and October 2007. The eight checks from 2007 match eight of the "Minister/Volunteer Maintenance[ce]" checks previously claimed (but not documented) for 2007. The bank documents indicate that the petitioner paid the beneficiary an aggregate total of \$31,245.42 during the qualifying period, an amount that appears to be sufficient for the beneficiary's material support at the austere level one would expect under a vow of poverty.

Between the petition's 2007 filing date and the 2009 denial, USCIS published new regulations for special immigrant religious worker petitions. Supplementary information published with the new rule specified: "All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule. If documentation is required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008).

The USCIS regulation at 8 C.F.R. § 204.5(m)(7) requires that an authorized official of the prospective employer of an alien seeking religious worker status must complete, sign and date an attestation prescribed by USCIS and submit it along with the petition. The prospective employer must specifically attest to twelve points spelled out in the regulatory language. The record does not contain the required attestation, and therefore the petition cannot be approved as it now stands.

Therefore, the AAO will remand this matter for appropriate action. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.