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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  
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 12 2010

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:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO subsequently remanded the petition to the director for a new decision based on revised regulations. The director determined that the petitioner had failed to submit required evidence, and therefore the director again denied the petition and certified the decision to the AAO. The AAO will affirm the director's decision.

The petitioner is a Buddhist 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 an assistant nun. The director determined that the petitioner had not established its ability to support the beneficiary with room, board and other necessities.

As required by 8 C.F.R. § 103.4(b)(2), the director allowed the petitioner 30 days in which to submit a brief in response to the certified decision. To date, the record contains no further correspondence from the petitioner or from counsel.

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) in effect at the time of filing required the petitioner to establish how the alien will be paid or remunerated, and to submit documentation to clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support.

The petitioner filed the petition on December 3, 2007. The petitioner's initial submission included financial documentation relating to [REDACTED] "the founder and leader of" the petitioning temple (using the title [REDACTED]). She founded the petitioning temple in 2005. The next year, according to Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, [REDACTED] earned \$24,883.75 from [REDACTED] Phoenix, Arizona. On her 2006 IRS Form 1040 income tax return, [REDACTED] identified her occupation as "tester."

An October 10, 2005 warranty deed reflects the donation of property to [REDACTED] who subsequently used the property as the petitioning temple as well as the residence of its nuns. (The petitioner filed its articles of incorporation less than two weeks later.)

On January 11, 2008, the director requested "**well-documented** evidence that [the petitioner] provided all of the beneficiary's living expenses during 1997" (emphasis in original). It is not clear why the director mentioned 1997 in this way, as the qualifying period spanned 2005-2007; the petitioning entity did not exist until 2005; and the beneficiary did not enter the United States until August 30, 2007. The director also stated: "Affidavits and/or evidence of the beneficiary's non-immigrant status is not sufficient evidence that the petitioner actually provided the beneficiary's housing, meals, clothing, transportation, medical expenses, etc." (emphasis in original).

In response, [REDACTED] stated that the beneficiary has resided at the petitioning temple "[s]ince September 2007." The petitioner submitted a copy of [REDACTED] 2007 income tax return, indicating that she earned \$25,378 that year as a "tester."

The petitioner submitted a Non Profit Solicitors Renewal to the City of Chandler, dated December 7, 2007. That document named [REDACTED] as "Venerable/President" and [REDACTED] as "Venerable/Vice President." The document does not mention the beneficiary.

The director denied the petition on March 13, 2008, stating that the petitioner had not established its ability to support the beneficiary. The director noted that the "founder and leader of the temple, must have outside employment to support herself. The petitioner has not established that the beneficiary would not also need to accept outside employment to meet her personal needs."

On appeal from the director's decision, counsel stated:

[I]t is not necessary for the prospective employer to demonstrate the ability to pay the proffered wage to the beneficiary. This is because the beneficiary is a Buddhist nun. Buddhist nuns are bound by their vow of poverty, which means that they do not receive

any compensation. Buddhist nuns are only provided with food, boarding, and other basi[c] necessities.

The above argument presumes the very issue in dispute, that being the petitioner's ability to provide the beneficiary with food, shelter, and other material support.

Regarding [REDACTED] secular employment, counsel asserted that [REDACTED] "has enough to support herself; she is simply working for extra income to contribute to the growth of her temple in their early days." The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Furthermore, counsel appears to concede that [REDACTED] must work an outside job to meet the temple's expenses beyond her own support. This issue directly affects the question of whether the religious activities of the temple generate enough income to support the beneficiary. In this light, [REDACTED] secular employment suggests that the temple is not self-supporting.

Any income that [REDACTED] donated to the temple would qualify as a tax-deductible charitable donation. According to [REDACTED] 2006 income tax return, she earned \$24,884 that year, but claimed only \$5,612 in gifts to charity. Even assuming that the entire donation went to the temple, the record does not support the claim that [REDACTED] performed secular work only for the temple's benefit.

[REDACTED] herself asserts "the nuns in our temple . . . are not allowed to have job[s] outside the Temple," but this statement is not credible, as she herself is a nun at that temple with a job outside the temple.

The petitioner submits copies of financial statements for 2006 and 2007. The 2007 statement reads, in its entirety:

|                         |           |
|-------------------------|-----------|
| End balance of 2006     | 1,275.01  |
| Total donation          | 23,700.00 |
| Direct Expense          |           |
| Utilities               | 5,078.94  |
| Insurance               | 325.00    |
| Repairs and Maintenance | 4,627.55  |
| Transportation          | 1,079.78  |
| Total                   | 11,111.27 |
| Ending balance of 2007  | 13,863.74 |

Significantly, the statement lists no expenses for food or other material needs. The financial statement, therefore, is evidence that the petitioner did not purchase food or other necessities for the beneficiary.

On November 26, 2008, while the appeal was pending, USCIS published new regulations to replace and revise the former regulations at 8 C.F.R. § 204.5(m). On December 15, 2008, the AAO remanded the petition to the director for adjudication under the new regulations.

The new regulation at 8 C.F.R. § 204.5(m)(10) reads:

*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.

On December 23, 2008, the director informed the petitioner of the new regulatory requirements. The director quoted 8 C.F.R. § 204.5(m)(10) in full. In response, the petitioner submitted copies of previously submitted materials, and new letters in which [REDACTED] asserted that the petitioning temple “provides . . . food, transportation, room and board” to its three nuns, including the beneficiary.

The director denied the petition on February 4, 2009, stating: “the petitioner states that they have been providing room and board and they will continue to do so. However, they have not submitted verifiable evidence to support this assertion.” As noted previously, the record contains no response from the petitioner or from counsel on certification.

The director has repeatedly advised the petitioner that the personal assurances of one temple official do not amount to verifiable evidence that the petitioner has and will continue to support the beneficiary. The petitioner has responded with more personal assurances, along with documentary evidence that is either irrelevant or else raises more questions. The petitioner has shown that its president works a secular job, and the petitioner has submitted financial statements that indicate that the petitioner spends nothing on food. These exhibits do not support a finding that the temple supports its nuns without outside employment. If the petitioner has purchased food for the nuns, then the financial statements are clearly incorrect and therefore unreliable, which would present another set of problems.

Review of the record reveals another issue of concern. 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 current 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. As noted previously, the petition was filed on December 3, 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 USCIS regulation at 8 C.F.R. § 204.5(m)(11) reads:

(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 . . .

(ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available. . . .

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 did not enter the United States until August 30, 2007, and therefore she spent most of the 2005-2007 qualifying period outside the United States. The petitioner has submitted documentation showing that she became a nun in 1988, but this is not evidence of continuous religious work during the 2005-2007 qualifying period. In a September 15, 2007 letter, [REDACTED] attested in general terms to the beneficiary's experience as a nun in Vietnam, but the record contains few if any details about her 2005-2007 work, and no evidence comparable to IRS documentation. Therefore, the petitioner has not established that the beneficiary meets the two-year continuous experience requirement.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the AAO will affirm the director's denial of the petition.

**ORDER:** The director's decision of February 4, 2009 is affirmed. The petition is denied.