

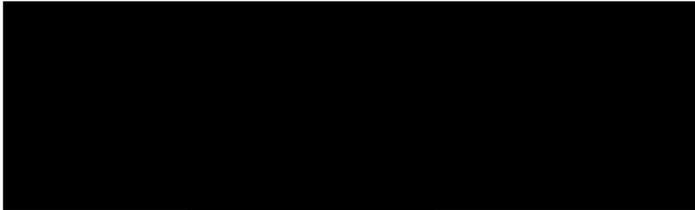
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 23 2010
WAC 06 250 51796

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:
[REDACTED]

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).

Mari Rhew
Perry Rhew
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 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 a monk. The director determined that the petitioner had not established that it is a bona fide nonprofit religious organization.

On appeal, counsel asserts that the director's Notice of Intent to Deny (NOID) the visa petition was so flawed that it did not provide the petitioner with "a fair opportunity to supply missing documentation," that the director ignored evidence and violated the Constitution's guarantee of freedom of religion by determining that the petitioner did not qualify as a bona fide religious organization. Counsel submits a brief and additional 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 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 issue presented on appeal is whether the petitioner has established that it is a bona fide nonprofit religious organization.

The regulation at 8 C.F.R. § 204.5(m)(5) provides, in pertinent part:

Tax-exempt organization means an organization that has received a determination letter from the IRS establishing that it, or a group that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the IRC of 1986 or subsequent amendments or equivalent sections of prior enactments of the IRC.

Additionally, the regulation at 8 C.F.R. § 204.5(m)(8) provides:

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

(i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or

(ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or

(iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code [IRC] of 1986, or subsequent amendment or equivalent sections of prior enactments of the [IRC], as something other than a religious organization:

(A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;

(B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;

(C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and

(D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

The petitioner submitted a copy of a February 7, 2005 letter from the IRS indicating that it was exempt as a church under section 501(c)(3) of the IRC. However, as a result of an attempted compliance verification visit conducted by an immigration officer at the petitioner's address, on June 17, 2008 USCIS determined that "the organization did not present itself as stated in the supporting documentation" accompanying its Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. According to the investigator, the petitioner's site consisted of two residential buildings that apparently housed four monks. The investigator also discovered that the individual who signed the Form I-360 petition had died and because of language difficulties, she could not determine who replaced him. The investigator stated that she was not allowed entry into the dwelling of the monk who answered the door and no one answered the phone when she called the petitioning organization. As a result, she could not verify the activities of the organization.

As a result of the site visit, the director issued the petitioner a Notice of Intent to Deny (NOID) dated February 6, 2009, in which she advised the petitioner of the June 18, 2008 visit and that the investigator could not determine where religious activities were conducted.

In her February 26, 2009 letter accompanying the petitioner's response, counsel stated that the director provided a "very confusing" NOID that apparently confused the petitioner's case with another. We note that the NOID referenced by counsel contains some technical errors. Nonetheless, the discussion of the adverse information from the site visit was accurate and pertinent and provided the petitioner with sufficient information to address and rebut the director's concerns.

In responding to the adverse information developed during the attempted compliance verification visit, counsel asserted that:

There are, in fact, two residential buildings on the 23 acre site of [the petitioning organization]. There are 2 eight bedroom houses where the high-ranking Monks of this order live, and the administrative headquarters of [the petitioner]. It is also a place of worship. The investigator apparently does not understand that Buddhist temples are often private residences. In fact, the entire [NOID] evidences a shocking lack of knowledge about Buddhism and its practices, in general. Please see [the] article which explains the history, religious practices, and cultural traditions of Buddhism.

The [petitioner] holds religious services inside the Meeting Hall of the residential buildings and also holds open-air ceremonies and festivals on the 23 acres.

The petitioner submitted an article from the website of Heartland Sangha American Buddhism about the history of Buddhism in the United States and which states that temples are sometimes established in residential housing, such as a three or four bedroom house. The petitioner also provided copies of photographs that it states are of its meeting room and of outside ceremonies. Nothing in the photographs, however, authenticates the documents as depicting the petitioner or

its activities. Additionally, nothing in the record supports counsel's assertions that the petitioner owns a 23-acre site on which it holds outdoor services, that the homes contain eight bedrooms that house the "high-ranking Monks," their headquarters and their place of worship. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel asserts on appeal:

It is a violation of the Constitution to refuse to recognize the [petitioner] as a bona fide religious organization. It is a tax exempt religious organization granted 501(c)(3) status by the U.S. government and the State of Massachusetts. The government cannot prescribe the form that religious worship should take. This denial is based primarily on the basis of a report of an investigator to the [petitioner's] property in Pelham, who is apparently ignorant of Buddhist faith and practices. Not finding a large recognizable church or temple, he found there was no "place of worship." This finding was refuted by Petitioner's evidence, but that evidence was ignored, thereby denying this Petitioner's religious freedom to carry out their religious practices in their traditional way, and to have the opportunity to bring Cambodian speaking Monks from Cambodia to minister to their community.

Counsel's assertion is without merit. First, while the petitioner may possess a letter from the IRS granting it exemption from income tax under section 501(c)(3) of the IRC, USCIS is not required to recognize the petitioner's bona fides as a religious organization for purposes of this petition if evidence during the petition process indicates otherwise. Further, while the determination of an individual's status or duties within a religious organization is not under USCIS's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with USCIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

Despite counsel's assertion, the petitioner's evidence has not refuted the investigator's determination that she found no evidence of a place of worship. She was not permitted within the house and therefore was not able to confirm or deny the existence of a place of worship. While we note that there are inaccuracies in the director's decision, including the size of the petitioner's congregation, the petitioner's evidence has not overcome the ground on which the petition was denied. The regulation provides at 8 C.F.R. § 204.5(m)(12):

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization

records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

The petitioner may not avoid meeting the requirements of this regulation by refusing to allow an onsite inspection. Because the petitioner refused to allow USCIS to conduct an onsite inspection, USCIS is unable to find that the petitioner has satisfactorily completed the onsite inspection. The petitioner cannot subsequently attempt to overcome this regulatory requirement through the submission of photographs and personal statements. We affirm this portion of the director's decision.

Beyond the director's decision, the petitioner has not established that the beneficiary worked continuously throughout the qualifying period.

The regulation at 8 C.F.R. § 204.5(m) provides that to be eligible for classification as a special immigrant religious worker, the alien must:

(4) Have been working in one of the positions described in paragraph (m)(2) of this section, either abroad or in lawful immigration status in the United States, and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. The prior religious work need not correspond precisely to the type of work to be performed. A break in the continuity of the work during the preceding two years will not affect eligibility so long as:

(i) The alien was still employed as a religious worker;

(ii) The break did not exceed two years; and

(iii) The nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

Therefore, the petitioner must show that the beneficiary had been working 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 December 18, 2008. Accordingly, the petitioner must establish that the beneficiary had been 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)(11) provides:

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 petitioner submitted documentation identifying the beneficiary as a monk. However, it provided no documentation establishing the beneficiary's work as a monk during the qualifying period. Accordingly, the petitioner has failed to establish that the beneficiary worked continuously in a qualifying religious vocation or occupation for two full years preceding the filing of the visa petition.

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.