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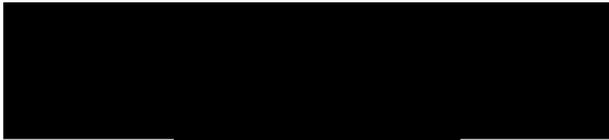
U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **MAR 25 2010**  
EAC 04 180 50584

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:

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.

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 employment-based immigrant visa petition was denied by the Director, Vermont Service Center (VSC). The Director, California Service Center (CSC) considered the petitioner's untimely appeal of that decision as a motion pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(2) and also denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner 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 pundit (Hindu priest). The director determined that the petitioner had not established that the beneficiary has been working continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the visa petition.

The petitioner submits 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 the beneficiary worked continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the visa petition.

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 May 29, 2004. 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.

In a letter dated December 14, 2003, the petitioner, through its spiritual leader [REDACTED] stated:

To date there are no salaried religious employees [with the petitioning organization]. All persons were assigned religious duties accepted it on a part time basis and offered voluntary services to the organization. [The beneficiary] has now been appointed on a full time basis as a salaried religious worker and will be holding this [position as] a [permanent] one, pending your approval.

In another letter of the same date, [REDACTED] verified "that there are no other paid religious or non-religious employees in our organization. If approved, [the beneficiary] will be the first paid religious worker in our organization."

In a request for evidence (RFE) dated April 6, 2005, the Director, VSC instructed the petitioner to:

Submit evidence that establishes that the beneficiary has continuous two years full-time experience in the religious vocation, professional religious work, or other religious work for the period immediately prior to May 29, 2004. Such evidence may be statements which include all of the following information: detailed listing of the beneficiary's duties, the commencement and termination dates of employment, and the time spent per week by the beneficiary performing those duties. [Emphasis omitted.]

The director also instructed the petitioner to "Submit a daily schedule of the duties performed by the beneficiary showing the amount of time spent in each duty."

In an April 29, 2006 letter submitted in response to the RFE, [REDACTED], stated:

Since November 1, 2000, [the beneficiary] had been working with [the petitioning] organization as "an assistant priest."  
He was a paid religious worker. He was then classified as a temporary worker and has been granted a permanent position on December 1, 2003. He has been employed with this organization since November, 2000 to the present date.

[He] has been receiving a monthly salary of [\$1,750] from the day he started until April 30, 2004. From May 1, 2004 he had an increase (due to his new position), which allowed him to be paid [\$2,250] per month. [He] has been receiving this new salary since May 1, 2004 to present date.

In a May 1, 2006 letter, the petitioner's programs coordinator, [REDACTED] provided the beneficiary's work schedule for the period December 2000 through April 2004, indicating that the beneficiary worked from 9:00 am to 7:00 pm on Sundays, five hours each day from Monday through Friday, and three hours on Saturdays.

The petitioner also provided a letter signed by [REDACTED], stating:

[The beneficiary] will be assigned to the following hours:

Sundays: 9:00am to 7:00pm (total of two hours break time).

Monday to Thursday: 5:00am to 7:30am / 5:30pm to 9:00 pm.

Fridays: 7:30 pm to 9:30 pm

This gives him a total of 40 hours in his religious duties. In addition to this he may be required to attend special functions at other locations/homes of members and other churches (on behalf of our church).

The petitioner submitted a June 9, 2005 letter from its recording secretary, [REDACTED] verifying that the beneficiary "started to work here as an assistant priest since February 1<sup>st</sup>, 2001" and "has been working with us fulltime from the above date to this present day." The petitioner also submitted copies of Form I-797A, Notice of Action, indicating that the beneficiary was approved for R-1 nonimmigrant religious worker status for the period October 30, 2000 to June 8, 2003, and again from June 5, 2003 to June 5, 2004. Both petitions for R-1 nonimmigrant status were filed on behalf of the beneficiary by the petitioning organization. In a May 19, 2005 letter, [REDACTED] the petitioner's secretary stated that the beneficiary had worked for the organization "on a full time basis" from October 30, 2000 to June 8, 2003. The petitioner also provided copies of IRS Form 1099-MISC, Miscellaneous Income, indicating that it paid the beneficiary \$21,000 in nonemployee compensation in 2001, 2002 and 2003, \$25,262 in 2004 and \$27,000 in 2005.

In denying the petition, the director noted the inconsistencies in the petitioner's statements that, as late as December 2003, it had no salaried employees and that, upon approval of the petition, the beneficiary would become the first. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The director also concluded that the petitioner had not provided a detailed description of the beneficiary's work during the qualifying period or how he supported himself.

In response to a March 13, 2009 RFE from the Director, CSC, the petitioner provided a detailed list of the beneficiary's responsibilities and the time in which he spent performing each task.

Additionally, the petitioner submitted an April 13, 2009 letter from [REDACTED], who stated that the beneficiary “commenced employment on February 28, 2001 and worked full time” as a pundit until June 5, 2004. [REDACTED] also stated that the beneficiary received a monthly salary of \$1,750 from February 2001 to April 2004, and \$2,250 monthly “as of May 2004.” [REDACTED] then stated that since June 6, 2004, the beneficiary does not receive a salary but “salaria,” which it defines as “an allowance for provisions” and an “annual allowance or compensation, in the form of stipend Offerings made to allowance for evangelicals.” In another letter of the same date, [REDACTED] stated that the beneficiary “will receive \$500.00 per week and will receive food and clothing and any other basic necessity in the amount of \$13,450” for a total annual compensation package of \$39,450.

The record contains copies of the petitioner’s Form 990-EZ, Return of Organization Exempt from Income Tax, for the years 2001 through 2005, 2007 and 2008. We note that the 2001 Form 990-EZ does not indicate that the petitioner paid any salaries or other compensation during the year. This is consistent with the petitioner’s December 14, 2003 statement that it had no salaried employees and conflicts with the IRS Form 1099-MISC that it allegedly issued in 2001 reflecting that it paid the beneficiary \$21,000. While this documentation precedes the qualifying period, it raises questions as to the credibility of the other documentation submitted by the petitioner. Doubt cast on any aspect of the petitioner’s proof may, of course, 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. at 591. The petitioner’s documentation does not indicate that any of the tax documentation, e.g., the IRS Forms 1099-MISC or the IRS Forms 990-EZ, were filed with the IRS. The petitioner did not provide certified copies of either its income tax returns or those of the beneficiary.

On appeal, the petitioner submits for the first time a notarized copy of an employment agreement with the beneficiary for a period beginning on February 28, 2001 through February 27, 2004. The agreement is dated November 13, 2000. The petitioner’s submission of this document more than five years after the petition was filed also raises questions of its authenticity. *Id.*

The evidence of record does not sufficiently establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition. The petitioner’s secretary stated that the beneficiary began working for the petitioning organization in October 2000, when his R-1 visa was approved. In his April 29, 2006 letter, [REDACTED], stated that the beneficiary began working on November 1, 2000. However, the petitioner’s recording secretary, [REDACTED], stated that the beneficiary began work with the petitioner in February 2001. The petitioner alleged in 2003 that it had no salaried employees. Yet it provided documentation in the form of IRS Form 1099-MISC indicating that it paid the beneficiary \$21,000 a year from 2001 to 2003.

The petitioner has failed to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the visa petition.

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 sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.