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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: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: NOV 17 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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

2 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 is a Cambodian 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 the beneficiary had the requisite two years of continuous work experience as a monk immediately preceding the filing date of the petition.

On appeal, the petitioner submits statements from temple officials.

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 petitioner filed the Form I-360 petition on September 3, 2008. The petitioner's initial submission indicated that the beneficiary was ordained on July 23, 1991, and became a bhikku (monk) on June 13, 1993. A biography of the beneficiary submitted with the initial filing indicated that the beneficiary's "[e]ducational background," however, continued for several more years, including studies for a "Bachelor of Business Administration at Build Bright University" from 2002 to 2006, and a "Bachelor of Philosophy and Religion at Preah Sihanuk Reach University from 2005 to 2007. The beneficiary's transcript from Build Bright University, dated September 30, 2006, shows courses in accounting, management, and other business-related topics, but no mention of religious subjects.

On January 16, 2009, the director instructed the petitioner to submit evidence of the beneficiary's continuous employment throughout the 2006-2008 qualifying period. In response, the petitioner submitted copies of previously submitted materials, including a translated copy of an identification booklet attesting to the beneficiary's 1993 ordination ceremony and his 2002 transfer to another monastery "to pursue further education." The petitioner submitted no documentation originating from the September 2006-September 2008 qualifying period.

The director denied the petition on May 13, 2009, stating "the evidence is insufficient to establish that the beneficiary has been performing full-time work as a Monk for at least the two-year period immediately preceding the filing of the petition." The only evidence that the director cited in support of this conclusion was that "the beneficiary was attending school taking Bachelor of Philosophy and Religion at Build Bright Reach [sic] University."

On appeal, [REDACTED] of the petitioning temple, asserted that the beneficiary "works at least 35 hours per week and also goes to school." [REDACTED] claimed that the beneficiary worked three hours each weekday and ten hours per day on weekends.

The petitioner submits a letter from two officials of [REDACTED] and committee [REDACTED] state that the beneficiary devoted "15 hours per week" to his studies before graduating "with distinction on March 04, 2009." The officials listed various projects that the beneficiary undertook, such as teaching about [REDACTED] building wells, and distributing food to the poor, between 1997 and 2009.

While the beneficiary studied non-religious subjects at Build Bright University, documents from that university indicate that the beneficiary completed his studies there in May 2006, more than two years before the petition's September 2008 filing date. The record contains little evidence regarding the beneficiary's later studies at Preah Sihanuk Reach University, but the record consistently indicates that the beneficiary studied religion and philosophy at that university – fields of study that are certainly consistent with religious pursuits.

The regulation at 8 C.F.R. § 204.5(m)(4)(iii) permits an interruption in the beneficiary's religious work for "further religious training." Here, however, there is no evidence that this training amounted to a break or interruption in the beneficiary's qualifying religious work.

We will withdraw the director's finding that the beneficiary's college studies constituted a disqualifying interruption in the beneficiary's continuous religious work. Other factors remain, however, that prevent approval of the petition at this time.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

In an attestation dated March 30, 2009, [REDACTED] president of the petitioning temple, stated: "No package of salaried or non-salaried compensations [are] offered to the Buddhist monks. They are volunteers to serve the temple." The official also offered the contradictory assertion that the petitioner "has the ability and intention to compensate the monk."

We understand that monks often receive no monetary compensation, but the petitioner must still provide material support to the beneficiary, for instance in the form of food and lodging. The regulations do not permit the classification of an entirely uncompensated alien as a special immigrant religious worker.

The regulation at 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.

The petitioner has submitted no financial documentation to establish its ability to support the beneficiary, whether through monetary compensation or through other forms of support. USCIS cannot properly approve the petition without evidence to that effect.

Also, the regulation at 8 C.F.R. § 204.5(m)(12) reads:

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 record does not indicate that a compliance review or site inspection has taken place at the petitioning temple. If the director determines that such an inspection is necessary, then the director cannot approve the petition without first satisfactorily completing that inspection.

Therefore, the AAO will remand this matter for a new decision. 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.