

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
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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

C1



FILE: [REDACTED]
WAC 06 276 52142

Office: CALIFORNIA SERVICE CENTER

Date:
APR 14 2011

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:

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) remanded the matter for consideration under new regulations. The director again denied the petition and, following the AAO's instructions, certified the decision to the AAO for review. The AAO will affirm the director's decision. The petition will be denied.

The petitioner is "an organization promoting education, good citizenship, community development, civic commitment and involvement, and preserving Punjabi Culture, language, sports and performing arts." 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 religious teacher. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation, that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the petition, and how it intends to compensate the beneficiary.

The petitioner submits no additional documentation on certification.

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 first issue presented is whether the petitioner has established that the proffered position qualifies as that of a religious occupation. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(5) defines “religious occupation” as an occupation that meets all of the following requirements:

- (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.
- (B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.
- (C) The duties do not include positions that are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible.
- (D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

In its September 6, 2006 letter submitted in support of the petition, the petitioner, through its president, [REDACTED] stated that in the proffered position, the beneficiary would “be responsible for teaching the traditions and customs of [REDACTED]” and that his responsibilities would include:

- General and religious education to Sikh youth & adults.
- Compile bibliographies of specialized religious materials.
- [REDACTED] persons of Sikh religion residing in this area.
- To participate and promote the teaching of Sikh Gurus and Sikh religion, by conducting regular seminars, conferences and information sessions.
- To teach about the Sikh Scriptures, sing the (kirtan) [REDACTED] with other teachers.

In response to the director’s December 11, 2006 request for evidence (RFE), the petitioner stated in a December 20, 2006 letter that:

The principal duties of this position include:

- To educate and create awareness of the basic tenets, practices and educational history of [REDACTED]
- To publish and distribute excellent Sikh essays and educational materials for various age groups of [REDACTED] also to publish in local [REDACTED] based Newspapers & Magazines.
- To create a catalog of excellent books relating to Sikhism for libraries both in Punjabi as well as in English and bookstores to promote them among community members.
- To create religious educational programs and workshops focused on [REDACTED] issues for a variety of audiences keeping into consideration the current scenario in historical prospective.
- To create proactive audio visual presentations on [REDACTED] for a variety of subjects like teaching of [REDACTED] saints and other[s] listed in Holy Book[,] keeping into consideration the end audiences.
- To ensure accuracy of facts being presented on Sikhism in various brochures [sic], advertisements and other educational promotional materials.

Apart from the above, [the beneficiary] will also be performing the following community based duties:

- To teach American History and Basic English language to the community members so that they can pass the US Naturalization Examination to acquire the Citizenship.
- Fund generation from the leading community members and business for the Gurudwara and also find out the ways to obtain State or Federal Financial Grants [for] educational purposes.
- In charge of the [REDACTED] and to ensure that sufficient food supplies to ensure the proper food service to the visiting community.
- Organizing school for adults and children,
- To Preach Sikhism to persons of Sikh religion residing in this area,
- To preach Punjabi language and religious fundamentals to Sikh youths.

The petitioner stated that qualifications for the position included:

1. Bachelor degree having good command on both English and Punjabi Language[s].
2. Knowledge and follower of Sikhism and has at least past two year experience working with Sikh religious organization.
3. Traditional Sikh religious education and good moral character.

The petitioner also provided a schedule for the proposed duties:

To prepare Sikh essays, educational, advertisement material, audio-visuals in Punjabi and English Language.	14 hours
Fund generation from the leading community members and business	4 hours
To teach American History and Basic English language to the elderly community members (For Citizenship)	4 hours
In charge of the Langer Seva (Food Preparation)	10 hours
Organizing school for adults and children	4 hours
To organize religious and cultural programs, Festivals for Sikh youths.	4 hours

The director determined that the petitioner had failed to establish that the proffered position qualified as that of a religious occupation. The director stated that the petitioner had “provided a vague and nonspecific description of the beneficiary’s duties that fails to demonstrate what the beneficiary does related to traditional religious profession” and that the petitioner “failed to explain how the beneficiary’s duties related to the traditional religious function.”

On appeal, the petitioner took issue with the director’s language that it had provided a “vague and nonspecific description” of the duties of the proffered position. The petitioner stated that it had made clear that the proffered position “was a combination of traditional and modern religious job keeping into consideration the Sikh Community requirements in US society” and that “this position is not to just perform the traditional religious functions but to create awareness about Sikh religion, culture and philosophy.”

In response to the director’s Notice of Intent to Deny (NOID) the petition issued following the AAO’s remand, the petitioner stated that the proffered position “is a religious professional job” and “means [it] require[s] a Bachelor degree to perform such services.” The director again

denied the petition, in part based on the petitioner's failure "to articulate exactly how the Beneficiary's duties relate to a traditional religious profession practiced in this religious faith." As noted, the petitioner submitted no additional documentation on certification.

The beneficiary's schedule does not indicate that the duties of the proffered position primarily relate to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination and primarily relate to a traditional religious function as required by the regulation at 8 C.F.R. § 204.5(m)(5). The petitioner provided no documentation of the religious requirements of food preparation or the beneficiary's exact role in that preparation. The schedule indicates that, at most, the position involves 14 hours of religious work in preparing Sikh essays, educational, advertisement material, and audio-visuals. However, even with those duties, the petitioner has not clearly articulated the religious significance or content of those works.

The petitioner has therefore failed to submit sufficient documentation to establish that the proffered position is a religious occupation as defined by the regulation.

The second issue 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 worked 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 September 20, 2006. Accordingly, the petitioner must establish that the

beneficiary was 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 [Internal Revenue Service] documentation that the alien received a salary, such as an IRS Form W-2 [Wage and Tax Statement] 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 September 6, 2006 letter, the petitioner stated that the beneficiary's "services as a Religious Teacher are required on [a] continuous and permanent basis as he has been voluntarily associated with our Society since June 2003." The petitioner provided a copy of the beneficiary's Form I-94, Departure Record, indicating that he was admitted to the United States in an H-4 nonimmigrant status as a dependent of a temporary worker for the period May 25, 2004 until July 30, 2005. The record also contains a Form I-797A indicating that the beneficiary's application for extension of that status was approved on May 19, 2005 and valid until December 25, 2007. The petitioner submitted no documentation to establish that the beneficiary was authorized to engage in employment in the United States. *See* 8 C.F.R. §§ 214.1(e), 214.2(h)(9)(iv).

In her RFE of December 11, 2006, the director instructed the petitioner to submit documentation of the beneficiary's qualifying experience:

Provide evidence of the beneficiary's work history for the years 2004, 2005 and 2006. Provide experience letters written by the previous and current employers that include a breakdown of duties performed in the religious occupation for an average week. Include the employer's name, specific dates of employment, specific job duties, number of hours worked per week, form and amount of compensation, and level of responsibility/supervision. In addition, submit evidence that shows monetary payment, such as pay stubs or other items showing the beneficiary received payment. If any work was on a volunteer basis, provide evidence to show how the beneficiary supported himself during the two-year period or what other activity the beneficiary was involved in that would show support.

The director also requested information regarding the beneficiary's immigration status. In response, the petitioner certified in a December 18, 2006 letter that the beneficiary "has been working with out organization . . . as [a] Religious Teacher on voluntary basis since June 2004" and that he was presently working 40 hours a week although he did not have authorization to work in the Untied States. The petitioner stated that it provided the beneficiary with "basic supportive services like gas money, food and also allow[s] him to accept donations from the community." The petitioner submitted no documentation to establish that it compensated the beneficiary in any form or of the support that he received from "the community." Even if the petitioner establish support from the community, such evidence would be insufficient to establish eligibility at the regulation specifically requires that the petitioner compensate the beneficiary. 8 C.F.R. §§ 204.5(m)(7)(xi), (xii), and (10)

The petitioner provided copies of the IRS Forms W-2 for the beneficiary's wife for the years 2003 through 2005 as evidence how the beneficiary supported himself while working on a voluntary basis. The petitioner also provided copies of the federal tax returns for the beneficiary's spouse for the corresponding years. As noted by the director, the uncertified and unsigned IRS Forms 1040, U.S. Individual Income Tax Return, for 2004 and 2005, indicate that the beneficiary's wife filed separately as head of household and did not include her husband on her tax returns.

The petitioner resubmitted the documentation regarding the beneficiary's immigration status; however, it submitted no documentation to establish that the beneficiary was authorized to work in the United States.

On appeal, the petitioner stated that although the beneficiary did not have authorization to work and that the petitioner did not pay him because of this, he did work continuously throughout the two years immediately preceding the filing of the petition. The petitioner attributed the filing status of the beneficiary's wife to an error by the tax preparer and provided copies of IRS Form 1040X, Amended U.S. Individual Income Tax Return, for 2004 and 2005, on which she changed her filing status to "married filing jointly." Neither of the returns is signed or dated and neither reflects that it was filed with the IRS. Further, an IRS Form 1040 attached to each of the amended returns indicate that the beneficiary was unemployed.

In response to the NOID issued following the AAO's remand, the petitioner provided uncertified copies of the beneficiary's unsigned and undated IRS Forms 1040 for 2006 and 2007. Again the

beneficiary's occupation is identified as "unemployed." The petitioner submitted no other documentation of the beneficiary's work during the qualifying period.

The petitioner's claim and evidence regarding the beneficiary's self-support during the two-year period prior to filing is disqualifying. In the supplementary information for the final rule, as it relates to self-support, the rule stated:

Compensation Requirements

USCIS proposed to add a requirement that the alien's work, under both the immigrant and nonimmigrant programs, be compensated by the employer. Specifically, the rule proposed amending the definition of "religious occupation" to require that an occupation be "traditionally recognized as a compensated occupation within the denomination." Commenters were concerned that the proposed rule would exclude many religious workers who do not receive salaried compensation, but may receive stipends, room, board, or medical care, or who may rely on other resources such as personal savings, rather than salaried or non-salaried compensation.

In response to the commenters' concerns, USCIS is clarifying that compensation can include either salaried or non-salaried compensation. Under the Internal Revenue Code, non-salaried support, such as stipends, room, board, or medical care, qualifies as taxable compensation unless specifically excluded.

. . .

Several commenters stated that the proposed compensation requirement would exclude programs that traditionally utilized only self-supporting religious workers from participating in the R-1 visa program. The comments noted that religious workers who are self-supporting receive neither salaried nor non-salaried compensation; instead, they may rely on a combination of resources such as personal or family savings, room and board with host families in the United States, and donations from the denomination's local churches. Additionally, the comments noted that self-supporting religious workers are currently admitted under the R-1 visa program. In response, the final rule will continue to allow these aliens to be admitted under the R-1 visa classification. USCIS will, however, to preserve its ability to prevent fraud, permit self-supporting religious workers only under very limited circumstances, and, consistent with other provisions of the final rule, require specific types of documentation.

The change provides that if the nonimmigrant alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work within the organization, which is part of a broader, international program of missionary work sponsored by the denomination.

USCIS again notes that the religious worker visas are not the exclusive means by which an alien may be admitted to the United States to perform self-supported religious work, including missionary work. Current regulations specifically provide for the admission of missionaries under the general visitor for business visa

73 Fed. Reg. at 72281-72282. *See also* Fed. Reg. at 72278.

As specifically provided for in the final rule, the only religious workers who may rely on self-support rather than actual salary or in-kind support as evidence of their prior employment are those workers in an established missionary program under an R-1 or B-1 nonimmigrant visa. In this instance, the record does not establish that the petitioner was in a missionary program or that he was an R-1 or B-1 nonimmigrant. Instead, as previously discussed, the record indicates that the petitioner last entered the United States on May 25, 2004 as an H-4 dependent of a temporary worker and obtained a subsequent extension of that status to December 25, 2007. The petitioner's voluntary work in the United States is not qualifying. As indicated in the supplementary information for the proposed rule:

USCIS recognizes that legitimate religious work is sometimes performed on a voluntary basis, but allowing such work to be the basis for an R-1 nonimmigrant visa or special immigrant religious worker classification opens the door to an unacceptable amount of fraud and increased risk to the integrity of the program.

72 Fed. Reg. 20442, 20446 (Apr. 25, 2007).

As the petitioner alleges that the beneficiary worked on a volunteer basis and as the beneficiary was not authorized to work in the United States, 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. Additionally, the petitioner has failed to submit sufficient documentation to establish that the beneficiary worked in any capacity during the qualifying period.

The third issue is whether the petitioner has established how it intends to compensate the beneficiary.

The petitioner stated in its letter of September 6, 2006, that the beneficiary would receive a salary of \$24,000 per year in addition to "free food & standard benefits."

The regulation at 8 C.F.R. § 204.5(m)(10) provides that the petitioner must submit:

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.

With the petition, the petitioner submitted an unaudited copy of a "Forecasted Statement of Income for Years Ended December 31, 2006 and 2007." The documents projected income of \$180,000 and \$198,000, respectively, but did not specify the source of that income. The document also projected a net income of \$42,000 and \$46,200, respectively. While the statement projected salary expenses of \$66,000 and \$72,600, there is no indication that it budgeted for any salary to be paid to the beneficiary.

In response to the RFE, the petitioner submitted an unaudited copy of a "Forecasted Balance Sheet as of Years Ended December 31, 2006 and 2007." On appeal, the petitioner submitted copies of five unprocessed checks dated in November 2006, December 2006, February 2007, April 2007 and May 2007 made payable to another employee. The petitioner did not indicate that the beneficiary would assume the position of this employee. In response to the NOID, the petitioner submitted a copy of its IRS Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return, for 2007, a copy of its IRS Form 941, Employer's Quarterly Federal Tax Return, for the last quarter of 2007, a copy of its California Employment Development Department (EDD) Form DE-6, Quarterly Wage and Withholding Report, for the final quarter of 2007, and documentation of its payment to another employee. However, as the petitioner states that it has not paid the beneficiary and does not indicate that the beneficiary will be the successor of any employee that it is currently paying, the documentation submitted provides no evidence of its ability to pay the beneficiary any specific sum. Furthermore, all of the documentation regarding payment of compensation to any individual is subsequent to the filing date of the petition. A petitioner must establish eligibility at the time of filing a petition. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

The petitioner has submitted no verifiable documentation of how it intends to compensate the beneficiary.

The AAO will affirm the certified denial 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. The petitioner has not sustained that burden.

ORDER: The director's decision of April 6, 2009 is affirmed. The petition is denied.