

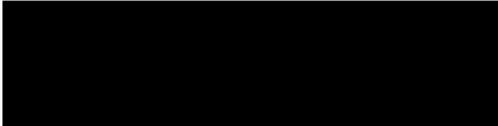
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



C1

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 03 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)

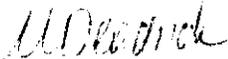
ON BEHALF OF PETITIONER:

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,


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 and will remand the petition for further action and consideration.

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 the proffered position qualifies as that of a religious occupation.

On appeal, the petitioner submits additional documentation.

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 is whether the petitioner has established that the proffered position qualifies as that of a religious occupation or vocation. 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.

The regulation also defines "religious vocation" as:

[A] formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia, to a religious way of life. The religious denomination must have a class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion. Examples of individuals practicing religious vocations include nuns, monks, and religious brothers and sisters.

In an October 12, 2008 affidavit submitted with the petition, the petitioner stated that it had offered room and board to the beneficiary, whose occupation was that of [REDACTED]. The petitioner provided no other documentation about the proffered position.

In response to a request for evidence (RFE) dated February 3, 2009, the petitioner repeatedly stated that the beneficiary was a [REDACTED] and further stated that the monks at the temple provide:

- Worship services.
- Guidance and counseling
- Reach out to communities.
- Organized special events or major events of the year.
- House blessing: members may invite the monks to have a house blessing.
- Funeral services. And many others.

The petitioner stated that beneficiary served as corresponding secretary, "a key person who handles" communication "between [the] Temple and communities." The petitioner also stated:

[The beneficiary] has been ordained into [REDACTED] for many years . . . He is in charge of corresponding secretary and cultural for youths.

The main purposes of these are:

- Helping youths be able to learn and understand their culture and heritage of their home country of [REDACTED]

In a second RFE dated May 20, 2009, the director advised the petitioner that the position of corresponding secretary “does not appear to qualify as an immigrant religious worker position” and instructed the petitioner to:

Explain how the duties of the position relate to a traditional religious function. Provide a detailed schedule and description of the work to be done, including the name of the employer, specific job duties, level of responsibility, number of hours per week performing each duties [sic] and the minimum education, training, and experience necessary to do the job.

In response, the petitioner stated that the duties of the monks change “based on the need of certain activities” and that currently, the beneficiary was handling the duties of corresponding secretary but “participated in various daily and weekly religious events.” The petitioner provided a list of the duties of Buddhist monks and a list of the major religious events occurring during the year.

The director denied the petition, determining that the position offered was that of a corresponding secretary and that the petitioner had not established that the duties of the position primarily relate to a traditional religious function. On appeal, the petitioner states:

The Temple has offered a Title as Corresponding Secretary for this position he will be able to provide in corresponding with all religious works between communities as the temple. Besides this function and he would be able to assist in various duties such as: Organize religious events throughout the year. Lead religious services, funeral services, [REDACTED] and many other religious services related.

The director erred in considering the proffered position as only that of a corresponding secretary. The evidence of record clearly indicates that the proffered position is that of a monk who would assume the lead as corresponding secretary. The evidence should therefore have been evaluated based on whether the petitioner had established that the proffered position constitutes a religious vocation. We find that the record sufficiently establishes that the duties of the proffered position constitute those of a religious vocation and we withdraw the director’s decision.

Nonetheless, the petition cannot be approved as the record now stands. The petitioner has not 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 October 27, 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 [internal Revenue Service] 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 provided a copy of the beneficiary's visa indicating that he was approved as an R-1 nonimmigrant religious worker to work for the [REDACTED]. The visa indicated that it was issued on November 17, 2006 and was valid until November 15, 2007. The beneficiary's Form I-94, Departure Record, reflects that he entered the United States on December 9, 2006 in an R-1 status with a period of stay to end on December 8, 2009. The petitioner submitted no documentation of the beneficiary's employment with [REDACTED]. Evidence in the record indicates that the beneficiary began working for the petitioner prior to the filing date of the petition. The petitioner has provided no documentation to establish that the beneficiary was in a lawful immigration status or that he worked continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the visa petition.

Therefore, this matter will be remanded. 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 AAO for review.