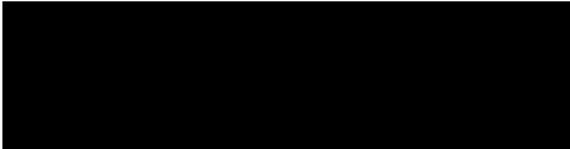


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



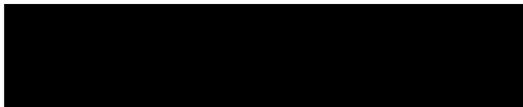
C₁

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: FEB 08 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:

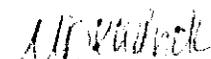


INSTRUCTIONS:

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 on June 21, 2007. The Administrative Appeals Office (AAO) rejected a subsequent appeal as untimely filed and returned the record to the director for consideration as a motion to reconsider. The director again denied the petition and the matter is now before the 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 voluntary religious worker. The director determined that the petitioner had not established that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the petition.

Counsel asserts on appeal that the beneficiary has worked as a religious worker with the petitioning organization since 1996 and the director's denial of the petition was frivolous. Counsel stated on the Form I-290B, Notice of Appeal or Motion, that she would submit a brief and/or additional documentation to the AAO within 30 days. However, as of the date of this decision, more than 18 months after the appeal was filed, the AAO has received no further documentation. Therefore, the record will be considered complete as presently constituted.

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

The U.S. Citizenship and Immigration Services (USCIS) 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 14, 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 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.

With the petition, the petitioner submitted a copy of an August 19, 2003 Form I-797A, Notice of Action, approving the beneficiary as an H-1B nonimmigrant to work for [REDACTED] in Santa Monica, CA. The visa was valid from August 18, 2003 to August 16, 2006. The petitioner submitted no documentation to establish that the beneficiary worked in a qualifying religious occupation or vocation for the two years immediately preceding the filing of the visa petition.

In response to the director's December 11, 2006 request for evidence (RFE), counsel stated that the beneficiary had worked at [REDACTED] from September 2003 to 2006 and at [REDACTED] since 2006. Counsel stated that an "H1B transfer application has been submitted" for the beneficiary's work at the latter school. The petitioner provided a copy of the beneficiary's IRS Form W-2 on which the [REDACTED] reported that it paid the beneficiary \$17,470.40 in wages. In a March 16, 2006 statement, [REDACTED], the petitioner's president and swami-in-charge, stated that the beneficiary "has been rendering continuous voluntary service" to the petitioner since 1995. The petitioner submitted no other documentation to establish that the beneficiary worked in a religious occupation or vocation during the qualifying two-year period.

In a May 1, 2007 RFE, the director instructed the petitioner to:

Provide evidence of the beneficiary's work history beginning 9-14-2004 and ending 9-14-2006 only. 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. **The experience letters must include a schedule that provides the time of day and detailed description of the exact duties performed for each hour of the work day throughout the entire week.** In addition to experience letters, submit documentary evidence that the beneficiary is performing all of the claimed duties. In addition, 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. [Emphasis in the original.]

In its May 16, 2007 response, the petitioner, through [REDACTED] stated:

All our directors[,] officers, members or individual helpers have always been voluntary religious workers all throughout their lives, who have been supporting themselves and doing jobs and by other means. As such[, the beneficiary] has been an active member and a volunteer religious worker who has been supporting herself like any other volunteer religious workers by maintaining her own paying job on the side such as teaching the students., etc.

In another statement of the same date, [REDACTED] outlined the beneficiary's duties during the qualifying period, which included three hours on Monday, Wednesday and Friday (from 7:00 am to 10:00 am) to clean the temple and the utensils used in religious ceremonies and two hours each day from Sunday to Saturday to garden. The schedule also included one hour each night from Monday through Friday for "Nightly prayer arrangement & conducting prayer from time to time," preparing food and making arrangements for festivals or holidays on 18 separate occasions from October 2004 to November 2006 (each event consisting of four 8-hour days), and occasionally serving as driver and assistant to the swami-in-charge.

The director denied the petition, determining that the "beneficiary has not been performing the duties of a full time religious worker as a valid non-immigrant religious worker 2 years immediately preceding the filing of the I-360 petition. On appeal, counsel asserts, "Between 2003-2004, [the beneficiary] moved to Santa Monica even then many weekends she drove to bay area to continue her service with [the petitioner] even when she was on H1B visa and worked for a local school."

The petitioner submitted insufficient documentation to establish that the beneficiary worked as a religious worker during the qualifying period. [REDACTED] stated that the beneficiary performed duties including cleaning, cooking and gardening. The petitioner also submitted a letter from the [REDACTED], who stated that the beneficiary drove [REDACTED] to Portland on occasion. The petitioner submitted no other documentation of any work performed by the beneficiary for the petitioning organization. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Additionally, the petitioner's claim and evidence regarding 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.

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 beneficiary was in a missionary program or that she was an R-1 or B-1 nonimmigrant. Instead, as previously discussed, the record indicates that the beneficiary worked in the United States pursuant to an H-1B visa. The petitioner's voluntary religious work for the petitioner 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).

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.

Beyond the decision of the director, the petitioner has not established that the proffered position qualifies as that of a religious occupation or vocation.

The 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.

As outlined above, the petitioner stated that the beneficiary's duties primarily consisted of cleaning, cooking, gardening and acting as a driver and occasional assistant to the swami-in-charge. In its May 16, 2007 response to the RFE, the petitioner stated that in its organization,

“every piece of service falls under the category of religious occupation.” Nonetheless, the petitioner submitted no documentation to establish that the duties of the proffered position relate to a traditional religious function, primarily relate to, and clearly involve inculcating or carrying out the religious creed and beliefs of the denomination.

The petitioner also asserts that it “is guaranteed by the United States constitution to function normally by the First Amendment and the 14th Amendment – The Free Exercise clause of religious liberty.” However, 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).

The petitioner has failed to establish that the proffered position qualifies as that of a religious occupation or vocation.

The petitioner has also failed to establish how it will compensate the beneficiary.

The petitioner stated that all of its workers are volunteers. 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.

In response to the director’s December 11, 2006 RFE, the petitioner submitted a copy of its November 2006 brokerage statement indicating that it had a balance in excess of \$974,752. It did not, however, offer the beneficiary a salary and, in accordance with its practices, expressed no intent to pay her for her services and expects the beneficiary to support herself through outside employment. Accordingly, it has failed to establish how it intends to compensate the beneficiary as required by the above cited regulation.

Finally, the petitioner has failed to meet the requirements of the regulation at 8 C.F.R. § 204.5(m)(7), which requires the petitioner to submit a detailed attestation with details regarding the petitioner, the beneficiary, the job offer, and other aspects of the petition. The record contains no such attestation.

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).

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.