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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:

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.

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,

M. Bradnick
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 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 beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the petition.

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 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 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 December 11, 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 its November 30, 2006 letter submitted with the petition, the petitioner stated that the beneficiary was ordained a Buddhist monk on June 27, 1995. The petitioner further stated:

[The beneficiary] obtained his degree in Buddhist theology, known as the Certificate of "Dhammavinaya", was granted the title of "Dhamma expert" of the first level on January 15, 1998, second level on January 15, 1999 and the third levels on January 15, 2000, Certificate of Buddhist Primary Education on February 21, 2000, Buddhist Junior High School Education on January 28, 2003, Provisional Certificate of Buddhist Senior High School Education on February 22, 2006, and Buddhist Teachings Certificate, respectively.

In response to the director's April 19, 2007 request for evidence (RFE), the petitioner submitted a document entitled "Biographic Details" dated June 19, 2007. The document reflects the beneficiary's education as listed above. In addition, the document indicates that the beneficiary had been an undergraduate at Preah Sihamony Raja Buddhist University since 2006. The document listed the beneficiary's experience as follows:

2002-2003	Acting abbot and teacher of Dhammavinaya at Buddhist Primary School, Wat Angkor Chey
2004-2005	Novice student at [REDACTED] Buddhist University, Phnom Penh
2006-2007	Assistant to His Holiness Preah Moha Somethea Thipadey Nount Nget

In a June 19, 2007 "certificate of employment," [REDACTED] abbot of the Wat Botum Vatey, certified that from [REDACTED], the beneficiary was a Buddhist student at Supreme Patriarch Bou Kry Buddhist High School, where he attended school five days a week from Monday to Friday from 7:00 am to 9:00 am and from 2:00 pm to 5:00 pm, with additional self study from 5:00 pm to 6:00 pm. On Saturdays and Sundays, his duties included "[e]ducating Bhikkhus, novice bonzes, Bhuddist [sic] followers at [REDACTED] commune." The certificate also indicated that the beneficiary was a student at the [REDACTED] University from 2006 to 2007, where he attended school six days a week from Monday to Saturday from 7:00 am to 11:00 am. In

addition he served as an assistant to Nount Nget, working two hours a day, from 2:00 pm to 4:00 pm, on Monday, Tuesday and Wednesday, and for (or as) the vice president of the Monks' Relief and Khmer Culture Organization on Thursday and Friday from [REDACTED]. The certificate indicated that on Saturday and Sunday, the "leads Bhikkhus and novice bonzes" in prayer from 4:00 am to 5:00 am and from 6:30 pm to 7:30 pm, preaches and educates Buddhist followers.

The director denied the petition, finding that the petitioner had not established that the beneficiary had been employed in the proffered position during the qualifying two-year period. On appeal, the petitioner submitted a July 25, 2008 attestation from [REDACTED], who stated that the beneficiary had been his assistant since July 5, 2006, and that his duties included:

- Does monastery work, prayers and meditations daily	14 hours
- Educates students and pupils staying [at] the monastery	7 hours
- Teachers Dharma and how to do a mediation to clergymen and Clergywomen staying [at] the monastery	7 hours
- Provides advice and teaches novice monks disciplines of Dharma	7 hours
- Leads Buddhists to celebrate religious ceremonies and preaches sermons	5 hours
Total:	40 hours

Although the abbot stated that the beneficiary "has definitely worked full time," his attestation does not indicate when the beneficiary began his full time duties. This is significant since he initially certified that the beneficiary worked for only six hours per week as his assistant while attending school.

On December 10, 2008, the AAO remanded the record to the director for consideration under newly implemented regulations. In a notice of intent to deny (NOID) the petition, the director notified the petitioner of the new regulations and requested documentation to establish the beneficiary's prior employment in accordance with those regulations. In response, the petitioner stated that it had previously provided evidence of the beneficiary's employment in the form of the employment certificate.

The director again denied the petition, determining that the petitioner had failed to establish that the beneficiary "had been a full time religious worker for at least the two year period immediately preceding the filing of the petition."

We note that the regulation does not require the petitioner to establish that the beneficiary worked full time in the qualifying religious occupation during the qualifying two-year period. However, the record reflects that the beneficiary was a student during the qualifying period of December 2004 through December 2006, while working only incidentally in his vocation. The regulation at 8 C.F.R. § 204.5(m) provides that schooling does not break the continuity of the work experience if:

- (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.

The certificate of employment indicates that the beneficiary worked approximately 12 hours per week while in school. The record does not, however, establish that the beneficiary's break to attend school was for a period of two years or less or that his education was for the purpose of furthering his religious training.

The petitioner has therefore failed to 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 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 May 28, 2009 is affirmed. The petition is denied