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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

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 01 2011

IN RE: Petitioner: [redacted]
Beneficiary:

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:

[redacted]

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,

Mari Johnson

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 dismiss the appeal.

The petitioner is a Sikh 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 ragi (associate priest). The director determined that the petitioner had not established that the beneficiary had the required two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits a brief from counsel and supporting documents, many of which duplicate prior submissions.

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 USCIS regulation at 8 C.F.R. § 204.5(m)(11) reads:

> *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.

The petitioner filed the Form I-360 petition on April 22, 2010. [redacted], secretary of the petitioning entity, stated:

> [The beneficiary] currently works as [a] Minister in R-1 [nonimmigrant] status at [the petitioning temple] since August of 2008. . . .
>
> [The beneficiary] will continue[] to be paid $1400 a month along with free room, board, food and utilities for his services. . . .
>
> From July 2006 to July 2008, [the beneficiary] has worked as [redacted] and performed religious services for the [redacted] in Palatine, Illinois.

We note that the quoted letter originally indicated that the beneficiary worked in Illinois until "October 2007," with that date obscured with correction fluid and "July 2008" added by hand. Other materials in the record indicate that the petitioner first offered the beneficiary employment in October 2007, contingent on the beneficiary obtaining the proper R-1 nonimmigrant visa. The petitioner filed a Form I-129 petition on November 13, 2007. USCIS approved that petition on August 5, 2008, at which point the beneficiary could lawfully work for the petitioner. This satisfactorily accounts for the original reference to "October 2007." The record also contains documentation of the prior R-1 nonimmigrant

petition that permitted the beneficiary to work at the Illinois temple from July 2007 until he moved to the Texas temple in 2008.

The documentation described above shows that USCIS had authorized the beneficiary to work for temples in Illinois and Texas throughout the two-year qualifying period. Nevertheless, the petitioner must still account for the beneficiary's employment throughout the two-year qualifying period, whether that employment was with the petitioner or with another entity. Proof of nonimmigrant status is not proof of employment within that status.

A copy of an IRS Form W-2 Wage and Tax Statement indicated that the petitioner paid the beneficiary $16,100 in 2009. Uncertified photocopies of the beneficiary's 2008 and 2009 IRS Form 1040 income tax returns included the following information:

Item	2008	2009
Wages, salaries, tips, etc.	$4,200	$16,100
Business income (or loss)	[not claimed]	7,156
Principal business or profession (Schedule C)	[not claimed]	Temporary Labor
Occupation	Miscellaneous	Miscellaneous

The 2008 tax return accounts for only three months' salary at $1,400 per month. The 2009 tax documents reflect 11½ months' salary at the stated rate. The tax documents do not reflect any non-monetary compensation, such as food or housing, that the petitioner claims to have provided to the beneficiary. They do, however, show the petitioner's address (as shown on Form I-360 and the pay receipts from 2010) as the beneficiary's residential address.

On June 16, 2010, the director instructed the beneficiary to submit additional evidence of the beneficiary's past employment, including IRS printouts of the beneficiary's tax returns and Forms W-2 for 2006-2009, copies of recent pay statements, and an itemized printout from the Social Security Administration (SSA) showing the beneficiary's past reported earnings. The IRS printouts match the uncertified copies of tax returns submitted with the initial filing.

In response, the petitioner submitted copies of IRS Forms W-2 and IRS tax return transcripts showing that the petitioner paid the beneficiary $4,200 in 2008 and $16,100 in 2009, matching the amounts shown on the beneficiary's previously submitted tax returns. An "Employee Earnings Record" indicates that the petitioner paid the beneficiary $1,400 per month from October 2008 through November 2009, and $700 per month thereafter. These payments are consistent with the IRS Forms W-2 for 2008 and 2009. The petitioner did not explain why it cut the beneficiary's salary payments in half beginning at the end of 2009. The column marked "REIMB[URSEMENTS] & OTHER PAYMENTS" is blank, indicating that the petitioner did not make any non-salary payments to the beneficiary.

A July 7, 2010 printout from the SSA showed that the beneficiary reported earnings of $4,200 in 2008 and $22,709 in 2009. The 2009 figure exceeds the petitioner's salary payments by $6,609. Because the printout is not itemized, it did not identify the source of this surplus income.

Neither the IRS nor the SSA documents showed any evidence of compensation before the autumn of 2008. The beneficiary, in an affidavit, stated:

> The Sikh Religious Society [in Illinois] filed for my R visa on February 15, 2006. . . .
>
> I worked for them from July 2007 to July 2008. . . . They supported me with expenses and paid some cash and check salary to me and also gave me shelter and food.
>
> However, I did not receive any W-2 forms or any paystub forms or papers while I was there. I was new to this country and did not speak English. I did not know I was supposed to receive those documents.

The petitioner did not submit any documents, or even witness letters, from to establish the extent (if any) of the beneficiary's work there. 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 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

The director denied the petition on August 18, 2010, stating that "the petitioner was unable to provide evidence of the beneficiary's employment as an R-1 [nonimmigrant] during the period of July 2007 to July 2008." The director noted that the beneficiary's affidavit is not sufficient evidence of employment during that period. The director added that the beneficiary's 2009 income tax return reflects "unauthorized employment . . . as a temporary laborer," which would mean that the beneficiary failed to maintain status as an R-1 nonimmigrant. *See* 8 C.F.R. § 214.1(e).

On appeal, counsel protests that "the beneficiary's previous work experience from India was not taken into consideration and was totally ignored." The beneficiary was in the United States throughout the entire two-year qualifying period from April 2008 to April 2010. The beneficiary's earlier experience outside the statutory period is irrelevant in this regard.

In a subsequent brief, counsel repeats the beneficiary's claim that, as a newcomer to the United States who spoke no English, he was unaware of tax reporting requirements when he worked for the Illinois temple. The officials of that temple, however, were presumably not in the same position as the beneficiary, and the beneficiary's recent arrival would not absolve that temple of the responsibility to maintain proper financial records and meet its lawful tax obligations.

Counsel claims that the beneficiary "worked for from July 2007 to July 2008, by doing lectures and preaching the Holy Book to the congregation in several different within the US. They supported him with expenses and paid some cash and salary in the form of checks, along with the shelter and food." Elsewhere in the same brief, counsel repeats this assertion, stating that the beneficiary traveled to "several different Gurudwaras in the US."

The petitioner submits a copy of an undated letter (a notary certified the copy on January 23, 2006) from president of the . The letter reads, in part:

> [The beneficiary] will lead us in daily and week-end religious services, conduct marriage ceremonies, funerals and other rites. He will teach our children musical instruments, Punjabi language and the way of our faith. We will pay him $500.00 a month for his services and provide him with room and board.

The letter says nothing about traveling to "several different Gurudwaras," and counsel has not even identified these sites, let alone documented the beneficiary's claimed visits to them. The clearly wrote the above letter in support of its R-1 nonimmigrant petition on the beneficiary's behalf. Therefore, the letter predates the beneficiary's claimed employment in Illinois. Likewise, the USCIS documentation showing approval of the beneficiary's R-1 nonimmigrant visa cannot prove employment, because USCIS issued that documentation before the claimed employment would have taken place. The record contains not a single piece of verifiable documentary evidence from the Illinois temple to show that the beneficiary ever worked there, or that he received regular payments of $500 per month as promised.

, identified as states in an undated letter that the beneficiary "had been performing religious services along with me as an assistant in from January, 2006 to September, 2008." We note that did not mention travel to other congregations, as counsel has repeatedly claimed on appeal, nor did he make any mention of compensation.

The regulation at 8 C.F.R. § 204.5(m)(11), in effect at the time of filing and still in effect today, unambiguously requires that "the petitioner must submit IRS documentation" of prior compensation paid to the beneficiary in the United States. Here, the petitioner has not submitted anything that even approaches the required level of evidence. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). We agree with the director's finding that the petitioner has not provided the required evidence of the beneficiary's claimed employment in Illinois in 2008, during the first months of the two-year qualifying period.

Counsel states:

> The income reported by the Beneficiary on his 2009 Tax Return amounting to $7,156.00 is the income he earned as tips. It is customary in [the] Sikh Religion that the devotees, attendees and visitors [make] monetary offerings during the prayer and bowing down in front and the Ministers who are doing . Attached, please find random pictures from the internet illustrating this point. The . . . offerings to the Ministers [are] distributed among the group of Ministers performing that day and can be termed as [a] tip. . . .

> The beneficiary has reported the earnings of tips to the IRS and the income tax preparer has reflected the tips in the column as business income. . . . Generally, the tip paid in the check in [the] restaurant industry . . . is reported by the employer to the IRS and becomes part of the employee's W-2. However, that is not the case in this situation.

The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). "Random pictures from the internet" are not sufficient evidence to show that business income the beneficiary reported from "temporary labor" was actually income from "tips" from temple visitors. Even then, the initial appellate submission (where counsel's quoted passage appeared) includes only one photograph, along with a printout from the search engine Google (http://www.google.com) for the words "pics of ragi jatha." The photograph shows loose currency piled in front of three musicians on a platform marked with the words [redacted] Whatever the photograph may say about the general practice of donations to [redacted] it does not and cannot show that such donations were the source of the extra income reported on the beneficiary's 2009 income tax return.

[redacted] prepared the beneficiary's 2009 income tax return. Her name, telephone number, and address appear on that form. Despite the petitioner's possession of this contact information, the petitioner has not submitted any statement from [redacted] to corroborate counsel's claims on appeal.

Ultimately, the record simply does not provide enough information for us to be able to identify the source(s) of the beneficiary's additional claimed income. Because section 291 of the Act places the burden of proof on the party seeking benefits, we are under no obligation to give the petitioner the benefit of the doubt and presume an innocent explanation for the earnings that the beneficiary claimed as business income from "temporary labor" on his 2009 income tax return. The petitioner has not resolved this potentially disqualifying issue.

For the reasons described above, we agree with the director's finding that the petitioner has not met its burden of proof to establish that the beneficiary continuously and lawfully performed qualifying religious work throughout the two-year qualifying period. We note that the lack of evidence from the Illinois temple and the apparent claim of outside employment provide two independent lines of reasoning that converge upon this conclusion.

The AAO may identify additional grounds for denial beyond what the Service Center identified 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 this instance, we note that 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 stated that it intends to pay the beneficiary $1,400 per month plus housing, food and utilities. As we have already observed, the petitioner was paying the beneficiary $1,400 for a time, but then halved the beneficiary's monthly salary to $700 in December 2009. The appeal includes copies of the beneficiary's July-September 2010 pay receipts, which also show $700 monthly payments. The petitioner has provided no evidence to show that it provides non-monetary compensation to the beneficiary, or that such compensation increased in late 2009 to make up for the beneficiary's reduced salary. Because the petitioner was paying the petitioner the proffered salary (if not related compensation), and then drastically reduced that salary, it is not at all apparent that the petitioner intends to pay the beneficiary at the rate described in the petition documents.

If the substantial reduction in the beneficiary's salary corresponds to a comparable reduction in the beneficiary's work hours, then the regulation at 8 C.F.R. § 214.2(r)(14) requires the petitioner to notify the Department of Homeland Security of this change within 14 days. The record does not reveal whether the salary cut corresponded to a decrease in work hours, or whether, if so, the petitioner has complied with this requirement.

We further note that three consecutive pay stubs show three different San Antonio addresses for the petitioner. The June 2010 statement shows an address on [redacted] the July 2010 statement shows a [redacted] address, and the August 2010 statement indicates an address on [redacted] (also shown on earlier IRS documents). The petitioner's employer attestation specified that the beneficiary would work at the [redacted] address, and the petitioner, on appeal, has submitted photographs of the temple at that location. The other addresses appear to be strictly mailing addresses rather than physical temple locations. Nevertheless, the frequent, unexplained address changes on the payroll documents introduce unnecessary confusion into the proceeding.

The AAO will dismiss the appeal 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 met that burden.

ORDER: The appeal is dismissed.