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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

PUBLIC COPY

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

MAR 09 2011

IN RE:

Petitioner:

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:

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,

S 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. Because the record, as it now stands, does not support approval of the petition, the AAO 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 passed a site inspection as part of the compliance review process.

On appeal, the petitioner submits arguments from an attorney, photographs of temple activities, and other exhibits.

We note that attorney [REDACTED] claims to represent the petitioner in this proceeding. The record, however, does not contain Form G-28, Notice of Entry of Appearance as Attorney or Representative, designating [REDACTED] as counsel. The record does contain Form EOIR-27, Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals, but this proceeding is not before the Board of Immigration Appeals. An appearance must be filed on the appropriate form as prescribed by DHS [Department of Homeland Security] by the attorney or accredited representative appearing in each case. The form must be properly completed and signed by the petitioner, applicant, or respondent to authorize representation in order for the appearance to be recognized by DHS. 8 C.F.R. § 292.4(a). Because the petitioner did not use the appropriate form (Form G-28), we cannot recognize [REDACTED] representation of the petitioner. We will accept the appeal, because an official identified as president of the petitioner's board of directors has signed Form I-290B, Notice of Appeal or Motion, but we will furnish a copy of the decision only to the petitioner.

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)(12) reads:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

The petitioner filed the Form I-360 petition on July 11, 2008. The signature on the petition form is illegible. The same individual signed an accompanying letter, dated July 6, 2008. The printed text of the letter does not show the name or title of the letter's author. The letter reads, in part:

The monks we have are not sufficient to serve the **size** and especially one monk is **ready to retire**. We are in serious need of adding more monks to our temple.

Currently, we have 3 monks and 12 volunteers. We are still short of 2 more monks. . . .

Fortunately, we have found a qualified monk who is willing to move from Cambodia to America.

On December 12, 2008, two USCIS officers visited the petitioning temple in order to verify the claims made in the petition. The officers' findings led the director to question the credibility of the petition. On May 14, 2009, the director issued a notice of intent to deny the petition. In that notice, the director offered the following summary of the officers' findings:

FDNS [Fraud Detection and National Security] Officers spoke with [REDACTED] He explained that he was 1 or 4 monks at the church [*sic*]. Pictures posted on the wall verified his claim. He showed his Texas driver's license as an identity document. . . . He was asked about the beneficiary of the petition. . . . He said that they were not receiving

a new monk, and that he did not know the person in question. He verified this with others at the facility, who all confirmed that no petition for a monk had been filed. He said that they . . . had no plans to bring in an additional monk.

In response, the petitioner submitted a jointly signed letter attributed to [REDACTED] head monk of the temple, and [REDACTED], president of the petitioner's board of directors. In the letter, the officials stated "we are in serious need of monks for our temple" because "[REDACTED] is in very serious health condition" and "The head monk is old and weak. He is now 93 years old." A separate letter, showing the same two signatures, took the form of a job offer addressed to the beneficiary.

A copy of an earlier (2007) letter, attesting to the beneficiary's qualifications as a monk, shows the signatures of [REDACTED] [sic] [REDACTED] then president of the petitioner's board of directors. [REDACTED] signature resembles the illegible signature on the Form I-360 petition.

The director denied the petition on July 16, 2009, stating that the petitioner failed to address the findings from the 2008 site inspection. On appeal, [REDACTED] states that the inspecting FDNS officer "spoke to one of the monks and not any member of the Board of Directors who actually filed the Petition. . . . The head of the temple is [REDACTED]. . . . He was not consulted when the immigration department called."

The failure of the compliance review and site inspection rests entirely on the contention that the petitioner has disavowed the petition. The record, however, indicates that authorized officials of the temple have repeatedly reaffirmed their offer to employ the beneficiary, in response to notices mailed to the temple's street address. These events tend to indicate that the temple is aware of, and supports, the petition.

A failed site inspection or compliance review does not raise a permanent and impenetrable barrier to approval of a petition. The petitioner may overcome such a circumstance with credible, verifiable evidence. We must also examine the circumstances under which the site inspection took place. The record reveals no attempt to speak with temple officials (such as the individual who actually signed the Form I-360). The denial of the petition rests almost entirely on the assertions of a single witness who was not a temple official, and who appeared to have a questionable grasp of the English language. The observation that the witness spoke to unidentified "others" adds little of substance to the matter at hand.

Therefore, the AAO will remand this matter for a new decision. 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 Administrative Appeals Office for review.