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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

[redacted]

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 09 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Hindu 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 resident priest. 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, and had not established how it intends to compensate the beneficiary.

On appeal, counsel asserts that the director failed to give consideration to the documentation submitted in support of the petition. Counsel submits a brief in support of the appeal.

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 first 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 February 4, 2008. 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.
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> If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

In a July 18, 2008 letter submitted in response to the director's request for evidence (RFE), the petitioner stated that the beneficiary "is a priest currently working as volunteer priest" with the petitioning organization and that of the petitioner's seven full time priests, the beneficiary was the only volunteer. The petitioner further stated, "During his stay at our temple from February 14, 2007 to present we provided him food and clothing. During this period he lived with his brother . . . who is also a priest at this temple." The petitioner submitted a July 19, 2008 statement from Vishawa Mittar who stated that the beneficiary is his brother and has been living with him since February 14, 2007. He further stated that he supports the beneficiary "with all the needs of residence. I also support him with other expenses if he needed [sic]." The petitioner also submitted several photographs; however, it made no representations as to what they depicted. The petitioner submitted no other documentation to establish the beneficiary's qualifying work experience.

In a February 27, 2009 RFE, the director again instructed the petitioner to submit documentation of the beneficiary's qualifying work experience, instructing the petitioner to "[p]rovide evidence that the beneficiary has been working for at least the two-year period immediately preceding the filing of the petition" as a minister, in a religious vocation, or in a religious occupation. In response, the petitioner resubmitted a copy of its July 18, 2008 letter and the statement of support from the beneficiary's brother. The petitioner also submitted an uncertified copy of the beneficiary's IRS Form 1040EZ, Income Tax Return for Single and Joint Filers with No Dependents, for the year 2006 on which he reported wages of $8,310. A copy of the beneficiary's IRS Form W-2 indicates these wages were paid by Angelica Textile Services, Inc. The petitioner additionally submitted an uncertified copy of the beneficiary's Form 1040, U.S. Individual Income Tax Return for the year 2007, on which he reported wages of $2,168 and miscellaneous gifts of $1,150. The IRS Form W-2 indicates that the beneficiary received $2,167.66 in wages from Angelica Textile Services, Inc. The petitioner submitted no documentation of the food and clothing that it provided to the beneficiary and again failed to provide verifiable documentation of the beneficiary's qualifying work during the two years preceding the filing of the petition.

On appeal, counsel asserts that the regulation does not require that the qualifying work must be in a full-time capacity and that non-salaried compensation can be used to establish the qualifying experience. Nonetheless, the petitioner has submitted no verifiable documentation to establish that the beneficiary worked in qualifying religious work during the requisite period.

Furthermore, the record does not establish that the beneficiary was in a lawful immigration status during the two years immediately preceding the filing of the petition. On the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, the petitioner stated that the beneficiary entered the United States on November 17, 1997. Although the petitioner did not indicate the beneficiary's status at the time of entry, it indicated that the status expired on April 4, 1999. The record does not establish that the beneficiary was in a lawful immigration status during the two years prior to the filing of the petition. Any work performed in an unlawful immigration status interrupts the continuous work experience for the purpose of this visa petition. *See* 8 C.F.R. § 204.5(m)(11).

Accordingly, the petitioner has failed to establish that the beneficiary worked continuously in a qualifying religious vocation or occupation for the two years immediately preceding the filing of the petition.

The second issue presented is whether the petitioner has established how it intends to compensate the beneficiary.

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 a November 16, 2007 contract, the petitioner stated that the beneficiary would receive a yearly salary of $9,000 and that it would provide the beneficiary with "other benefits" when it "can do so." The contract also provided:

> The resident priest shall be provided with living accommodations, food and other necessities valued at $750.00 per month, for a yearly total of $9000.00. He will reside on the premises owned by the [petitioner], when such accommodations become available. His quarters have an estimated rental value of $600.00 per month for a yearly value of $7.200 per year, which is included in the total above.

With the petition, the petitioner submitted a copy of its unaudited income and expenses report for 2005 and 2007. In response to the director's April 29, 2008 RFE, the petitioner submitted copies of its unaudited annual cash flow reports for 2001 through 2004 and copies of IRS Form 941, Employer's Quarterly Federal Tax Return, and California EDD Form DE6 (Quarterly Wage & Withholding Report), for all quarters of 2007 and the first quarter of 2008. However, as the

beneficiary was not a paid employee of the petitioner, the petitioner does not indicate that the beneficiary will replace another paid employee, and the fact that these returns are all after the filing date of the petition, they are not relevant in establishing how the petitioner will compensate the beneficiary. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).The petitioner resubmitted this documentation in response to the director's February 27, 2009 RFE. On appeal, counsel asserts that the director failed to consider these documents as well as documentation of the petitioner's loan statement, utility billing statements and the value of the petitioner's property as assessed by Santa Clara County.

Nonetheless, the petitioner has failed to provide verifiable documentation of how it intends to compensate the beneficiary. The financial statements submitted by the petitioner are not audited. Therefore, limited reliance can be placed on the validity of the facts presented in the financial statements. The petitioner provided no further supporting documentation, such as bank statements, to reflect the assertions made within the unaudited financial statements.

Additionally, the petitioner provided no documentation on any non-salaried compensation that it will provide to the beneficiary. Although the petitioner submitted documentation to establish that it owns real property, it provided no verifiable documentation of its ability to provide the beneficiary with living expenses or accommodations. According to the employment contract, the beneficiary will live on the petitioner's premises "when . . . accommodations become available."

The petitioner has therefore failed to provide verifiable documentation of how it intends to compensate the beneficiary.

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.