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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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DATE: **MAY 27 2011** Office: CALIFORNIA SERVICE CENTER

FILE:

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:



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 and it 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 temple administrator. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation.

On appeal, counsel asserts that the director erroneously analyzed the evidence, and that the totality of the evidence in the record establishes that the proffered position relates to a traditional religious function. Counsel submits a brief and additional documentation 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 issue presented on appeal is whether the petitioner has established that the proffered position qualifies as that of a religious occupation. The U.S. Citizenship and Immigration Services (USCIS) 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.

In its July 10, 2008 letter submitted in support of the petition, the petitioner stated:

[T]he position of the Temple Administrator consists largely of traditional Hindu religious functions and responsibilities.

The Temple Administrator must be a person who is knowledgeable in Hindu scriptures, has knowledge in Hindu religious rituals and customs and fluent in Hindu Slokas and Indian languages especially in Tamil (as the scriptures of the main deity in the [petitioning organization] are primarily in Tamil). He must have excellent verbal and written communication skills[,] have good presentation skills and possess knowledge of web and instructional design issues relating to teaching and learning in a traditional classroom and be proficient in Microsoft products. The Temple Board is looking for a person who has a Bachelor Degree in the area of Commerce or Business with a working knowledge of accounting, has excellent knowledge of Instructional Technology and Indian Languages especially Tamil. For the future plans of the temple, the temple administrator must be able to interact with the temple artisans and sculptors from India who for this temple would come from the state of Tamil Nadu, South India and speak the language Tamil.

The petitioner submitted a job description for the proffered position and identified the following duties:

1. Design and teach Hinduism classes for Hindu devotee in a traditional classroom.
2. Translate Hindu scriptures from Tamil to English . . .
3. Singing, leading and teaching devotional songs, hymns and verses from Hindu scripture in Tamil.

4. Design and Maintain Temple Website with an emphasis on user Friendliness and accessibility to Hindu devotees.
5. Arranging for skilled workers from India for Indianization of the temple in accordance with tenet's [sic] of Hinduism by liaising with Hindu priests.
6. Preparation of temple publications including monthly Newsletters and periodical information brochures.
7. Conducting activities to promote a positive, inspiring and proper image of the temple among members and in the community.
8. Developing and maintaining a library on Hinduism and directly associated matters.
9. Arranging program for the education of religious values, culture, customs and practices.
10. Arranging and scheduling Yoga and meditation classes.
11. Arranging religious and cultural events.
12. Responsible for office functions, including database maintenance correspondence by mail and e-mail.
13. Responsible for the day-to-day operation of the temple connected with devotees services.
14. Responsible for accounting and preparing the temple financial accounts.
15. Assist with providing information and supporting documentation to auditors.
16. Provide information and reports to temple trustees as required.
17. Other duties as assigned by Temple trustee.

In a January 17, 2009 request for evidence (RFE), the director instructed the petitioner to provide the additional information regarding the proffered position:

Provide a **detailed description** of the work to be done, including specific job duties, level of responsibility/supervision, and number of hours per week to be spent performing each duty. Include a daily and weekly schedule for the proffered position. List the minimum education, training, and experience necessary to do the job and submit documentary evidence to show that the beneficiary has met such requirements. Further, explain how the duties of the position relate to a traditional religious function. [Emphasis in the original.]

Traditional Religious Occupation: Provide evidence that the duties primarily relate to a traditional religious function and the position is recognized as a religious occupation within the denomination. Provide evidence that the duties are primarily related to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.

In response, the petitioner submits an "hourly/weekly schedule" that includes entries such as preparing temple for devotee services and assisting the priest with morning rituals; deities worship, singing, leading and teaching devotional songs; planning and conducting activities "to promote a positive image of the temple"; preparing temple publications; preparing temple

accounts, meditation; maintaining temple website; maintaining the congregation database; designing and preparing prayer and study materials; Hinduism classes; Tamil language classes; translating Hindu scriptures from Tamil to English, and being available to interact with devotees. The petitioner references this schedule, the organization's schedule of services, and the duties outlined in the job description as evidence "that the duties of Temple Administrator primarily relate to the traditional religious function of what we call Temple Administrator and which others might call junior priest or assistant priest." The petitioner states, however, that the position of temple administrator "is not being classified as that of a minister, but rather as a traditional religious occupation."

In denying the petition, the director found that the duties "as described are secular" and that the "duties such as translation, providing information, arranging activities and the like clearly illustrate a more administrative position." The director further stated:

Moreover, the Petitioner has enumerated the beneficiary's educational attainment, namely: a Bachelor Degree in the area of Commerce (and a working knowledge of accounting principles), a Master's Degree in Human Resource Training and Development, a second Master's Degree in Instructional technology, and proficiency in Microsoft Office. The record clearly shows that Beneficiary's line of work leans more towards administrative management.

The director also stated that "the record shows that the Beneficiary arrived in Sun Valley, Idaho in 1989 'with a plan to establish an organic juice bar and life food café.'" However, we note that the documentation indicates that these plans were those of the petitioner's founder rather than those of the beneficiary. We therefore withdraw the director's statements regarding the juice bar and any conclusions relying on these erroneous facts that may have affected her decision.

On appeal, counsel asserts that "with regard to the beneficiary's duties allegedly not being related to a traditional religious function, the duties were improperly analyzed as if all duties consume an equal time when in fact a detailed hourly and weekly schedule was provided into the record but was apparently ignored or overlooked." Counsel states that the regulation "expressly requires only that the duties 'primarily' (NOT exclusively) relate to a traditional religious function." Counsel argues that the evidence clearly establishes that the totality of the duties primarily relate to a religious occupation.

The director noted that translating, providing information and arranging activities "clearly illustrate a more administrative position." However, a review of the schedule provided by the petitioner indicates that the administrative requirements of the position do not outweigh the religious nature of the other duties of the position. In fact, the majority of the beneficiary's working day appears to be related to duties such as interacting with those attending the temple, assisting the priest and preparing the temple for services, singing, designing and preparing study materials for Hindu religious classes, and designing and preparing prayer and study materials for use in prayers and religious classes.

Counsel argues that the director “improperly used” the beneficiary’s “educational attainments” to “test the religious nature of the duties” and that “[s]urely it is not impermissible for a religious worker to have backgrounds and educational attainments that exceed an exclusively religious education.” The AAO concurs with counsel that the beneficiary’s education should not be the determinant as to whether a position qualifies as a religious occupation. However, the fact that the petitioner states that the requirements of the position included a bachelor’s degree in commerce or business with a working knowledge of accounting and “has excellent knowledge of Instructional Technology and Indian Languages especially Tamil” rather than any religious training was reason enough for the director to question the nature of the position offered.

Nonetheless, the AAO finds that the duties of the position as outlined in the job description and the schedule of the beneficiary’s duties are sufficient documentation to establish that the duties of the position primarily relate to a traditional religious function and involve inculcation or carrying out the religious creed and beliefs of the denomination. However, the petitioner submitted no documentation to establish that the proffered position is recognized as a religious occupation within its denomination as required by the regulation at 8 C.F.R. § 204.5(m)(5)(A).

The petitioner alleges that the position is similar to that of a junior or assistant priest. The petitioner submitted no documentation to establish that either of these positions is recognized as a religious occupation within its denomination. Further, the petitioner specifically stated that the position of temple administrator is not that of a priest. The regulation does not permit a petitioner to create or tailor a position, even if it is of a religious nature, for a specific individual. The petitioner provided no documentation that the position of temple administrator exists in any other organization within its denomination. The regulation at 8 C.F.R. § 204.5(m)(5) defines a religious occupation as one that meets all of the enumerated requirements.

Accordingly, the petitioner has failed to establish that the proffered position is a religious occupation within the meaning of the regulation.

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.