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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

C1



Date: Office: CALIFORNIA SERVICE CENTER

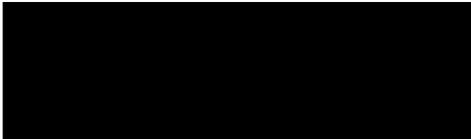
APR 23 2012

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

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 Buddhist monk. The director determined that the petitioner had not established that the beneficiary had the requisite 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, a letter from officials at the petitioning temple, photographs, a statement from members of [REDACTED] in [REDACTED] a letter from a [REDACTED] with an attached certificate of ordination, and a copy of the director's decision.

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 alien 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 petition was filed on August 31, 2009. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work in lawful status throughout the two-year period immediately preceding that date.

The USCIS 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 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.

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

The issue in this case is whether the beneficiary engaged in unauthorized employment during the two-year qualifying period, thereby failing to maintain lawful status and failing to meet the requirements of 8 C.F.R. §§ 204.5(m)(4) and (11).

According to the evidence submitted with the Form I-360 petition, the beneficiary entered the United States on September 12, 2007 in R-1 nonimmigrant status which authorized his employment with [REDACTED] Connecticut. Accompanying the petition, the petitioner submitted a letter dated December 28, 2007 from the [REDACTED] to the [REDACTED], in which the petitioner invited the beneficiary to come to Alabama and serve as a monk at the petitioning temple. Letters from both the petitioner and the beneficiary, submitted with the Form I-360 petition, stated that the beneficiary began working for the petitioner on January 10, 2008. On the beneficiary's Form G-325A, Biographic

Information, submitted with his Form I-485 application which was filed concurrently with the Form I-360 petition, the beneficiary listed January, 2008 as the date he began working for the petitioner. Service records indicate that the beneficiary did not hold authorization to work for any organization other than [REDACTED] during the two years immediately preceding the filing date of the petition.

The regulations at 8 C.F.R. §§ 214.2(r)(3)(ii)(E), as were in effect in 2007 when the beneficiary was approved as an R-1 nonimmigrant, required an authorized official of the organization to provide the “name and location of the specific organizational unit of the religious organization” for which the alien would work. The regulation at 8 C.F.R. § 214.2(r)(6) stated:

Change of employers. A different or additional organizational unit of the religious denomination seeking to employ or engage the services of a religious worker admitted under this section shall file Form I-129 with the appropriate fee ... Any unauthorized change to a new religious organizational unit will constitute a failure to maintain status...

Further, pursuant to 8 C.F.R. § 214.1(e), a nonimmigrant may engage only in such employment as has been authorized. Any unlawful employment by a nonimmigrant constitutes a failure to maintain status.

On February 23, 2010, USCIS issued a Notice of Intent to Deny in which it noted the beneficiary’s unauthorized employment with the petitioner and stated that the petitioner therefore failed to establish that the beneficiary has performed religious work in lawful immigration status for at least the two years immediately preceding the filing of the petition.

In response, the petitioner submitted a letter from counsel asserting that the petitioning temple burned to the ground in March of 2008, and the beneficiary, a nephew of a member of the petitioning temple, was asked to assist in rebuilding the temple based on his known skill “in the art of designing and finishing the inside of temples in a manner consistent with the beliefs and needs of the Buddhist faith.” Counsel additionally stated:

[REDACTED] did not initially believe it needed prior approval for [REDACTED] to come to the temple to help rebuild it since his uncle was a member of the church and he was being asked to help perform a unique skill which he had. When it became apparent that his presence in south Alabama would need to be extended, an official invitation was made and, subsequently, the proper USCIS documents were filed.

In a letter, [REDACTED] of the petitioning temple confirmed that the beneficiary was brought to help rebuild after the fire and he contended that he mistakenly put the wrong dates in the letters originally submitted with the Form I-360 petition. The [REDACTED] asserted that the letter to the [REDACTED] inviting the beneficiary to come to Alabama was sent on December

28, 2008, rather than December 28, 2007 as indicated in the previous letter. He additionally stated that the beneficiary began working for the petitioner on January 10, 2009, rather than January 10, 2008 as previously indicated. The petitioner also submitted a signed version of the letter to the [REDACTED] with the corrected date, a copy of the notice from USCIS confirming receipt of the Form I-360 petition on August 31, 2009, and a copy of the beneficiary's ordination booklet, previously submitted with the petition.

In her decision, the director notes that the petitioner's claims regarding the corrected timeline of events and regarding the reason for hiring the beneficiary "directly conflict with statements signed by BOTH the signatory of the petition AND the beneficiary at the time of filing" (emphasis in original). The director notes that in a letter accompanying the I-360 petition, the petitioner stated:

Due to increasing membership...and the demanding nature [sic] of Buddhist ministers for our congregation, we would like [REDACTED] extend his mission as a house monk to continue to minister to our temple's congregation on a full time basis. In his position, we will be responsible for performing religious duties on a daily basis in accordance with Buddhist rites and traditions. Other than officiating at weddings, funerals of Buddhism and Dhamma scriptures to our members in Lao - Thai, lead the temple's members and worshipers in meditation.. [REDACTED] will also lend spiritual guidance and teach monastic discipline to the members at our temple.

The petitioner made no mention of duties related to designing or rebuilding the temple at the time of filing. In the decision, the director questions the petitioner's credibility based on its failure to resolve the "serious discrepancies in the duties of the proffered position, in the explanations of the motivation that initiated the request for the beneficiary's services, and in the timeline of events." The director notes: "It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988)."

In the decision, the director goes on to conclude that, regardless of whether the beneficiary began working for the petitioner in January, 2008 or January, 2009, the beneficiary failed to maintain status as of the day he began working for the petitioner without authorization. The director therefore determined that the petitioner has not established that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

On appeal, counsel states the following with respect to the issue of the petitioner's credibility:

The USCIS states that there are "serious discrepancies in the duties of the proffered position, in the explanations of the motivation that initiated the request for the beneficiary's services, and in the time line of events." We believe the totality of the

evidence clearly demonstrates that the findings of the USCIS are clearly erroneous. No one disputes that the beneficiary is a legitimate Buddhist monk. His duties are many and well-documented; there are not serious discrepancies regarding the same. The same is true of the beneficiaries [sic] "motivation" as well as the chronology of events.

On appeal, the petitioner also submits a letter from officials of the petitioning temple stating that the beneficiary was invited to the petitioning temple to serve as a monk and help rebuild the temple after the fire. In the letter, the officials reassert the revised timeline of events as set forth in the response to the Notice of Intent to Deny. The petitioner also submits a statement purportedly signed by various Laotian individuals in Connecticut indicating that they knew the beneficiary and confirming that he lived in Connecticut and worked at [REDACTED]. The statement does not provide dates of the beneficiary's employment at that temple. In a letter from a monk at [REDACTED] also submitted on appeal, the monk states that the beneficiary lived at [REDACTED] "during 2007 and 2008." The petitioner additionally submits various photographs. Although no descriptions were included, they appear to be photographs of the beneficiary engaged in religious ceremonies and construction projects presumably at the petitioning temple.

Although counsel asserts that "there are not serious discrepancies" regarding the duties, motivation for hiring, and chronology of events, the petitioner offers no further explanation or evidence as to why all the documents purportedly signed by the beneficiary at the time of filing contained the wrong dates, or why no mention was made by the petitioner at filing regarding the beneficiary's role in rebuilding after the fire. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *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). Therefore, the AAO agrees with the director that the petitioner has failed to resolve serious discrepancies which call into question the petitioner's credibility. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

With regard to the beneficiary's lawful status, the petitioner does not argue that the beneficiary held authorization to work for the petitioner during the qualifying period. Instead, in a brief submitted on appeal, counsel for the petitioner again asserts that the petitioner "did not initially believe it needed prior approval for [REDACTED] to come" and that "when it became clear that his presence in south Alabama would need to be extended,... the proper USCIS documents were filed." The receipt notice submitted by the petitioner shows that the Form I-360 petition was filed by the petitioner on August 31, 2009. Service records indicate that a Form I-129 petition was filed by the petitioner on behalf of the beneficiary on August 24, 2010 and was subsequently approved, authorizing the beneficiary to work for the petitioner in R-1 nonimmigrant status from September 12, 2010 to September 11, 2012. Therefore, whether the beneficiary's employment with the petitioner began on

January 10, 2008 or January 10, 2009, such employment was not authorized and therefore constituted a failure to maintain lawful status and a failure to meet the requirements of 8 C.F.R. §§ 204.5(m)(4) and (11).

Because the petitioner has not established that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition, the AAO will affirm the director's decision to deny the petition.

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.