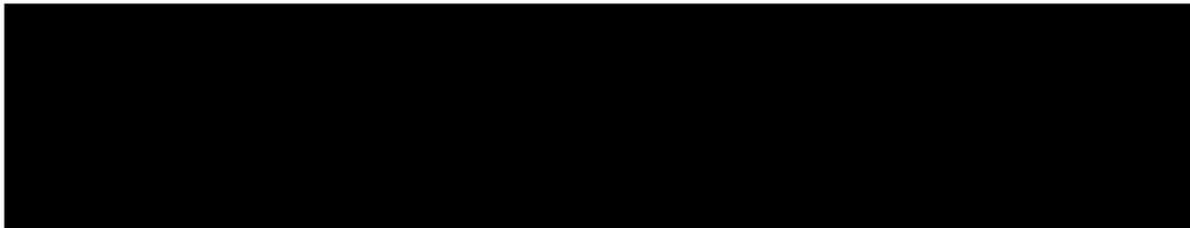


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



C,

DATE: **AUG 06 2012**

OFFICE: CALIFORNIA SERVICE CENTER

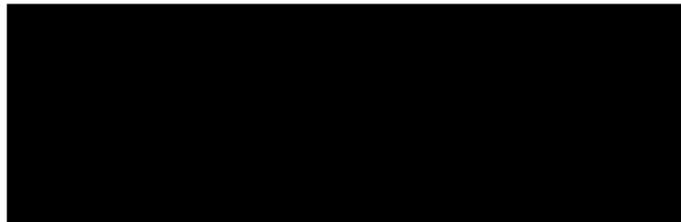
FILE: 

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, specifically as an assistant secretary, preacher, and house speaker. The director determined that the beneficiary had engaged in unauthorized employment during the two-year period immediately preceding the filing date of the petition.

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).

At issue on appeal is whether or not the beneficiary had engaged in unauthorized employment during the two-year period immediately preceding the filing date of the petition.

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 petitioner filed the petition on April 25, 2011. Therefore, the petitioner must establish that the

beneficiary was continuously performing qualifying religious work throughout the two years immediately prior to that date.

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

(11) *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.

On the petition, the petitioner indicated that the beneficiary last arrived in the United States on July 7, 2009. Therefore, the beneficiary was not in the United States throughout the entire two-year qualifying period. The record, however, reflects that the beneficiary first entered the United States in July of 2006 on an R-1 nonimmigrant visa and that he had worked continuously in the United States as a Buddhist monk from that date onwards. The record reflects that the beneficiary worked for the [REDACTED] in San Francisco, California from July of 2006 until April of 2007, for the [REDACTED] Santa Rosa, California from April of 2007 until November of 2007, for the [REDACTED] Santa Rosa, California from November of 2007 until July of 2010, and then for the petitioner's temple from July of 2010 onwards. On the Form I-360, under "Current Nonimmigrant Status," the petitioner wrote "R1" with an expiration date of July 5, 2011.

The director denied the petition on November 9, 2011, finding that the beneficiary engaged in unauthorized employment throughout the two-year qualifying period. The director highlighted that the beneficiary had possessed R-1 nonimmigrant status to work as a missionary monk for the [REDACTED] in San Francisco, California rather than for the [REDACTED] in Santa Rosa, California from November of 2007 to July of 2010 or for the petitioner's temple from July of 2010

onwards. The director found that the [REDACTED] and the petitioner's temple were separate organizational units from the [REDACTED] in San Francisco, California. The director found that the beneficiary had ceased possessing valid R-1 nonimmigrant status when he left the [REDACTED] in San Francisco, California in April of 2007 to work for the [REDACTED] in Santa Rosa, California.

On appeal, counsel asserts that the beneficiary was never transferred outside of his temple, because all of his transfers were within the same larger temple. Counsel also claims that the beneficiary completed two years of qualifying employment during the two-year period immediately preceding the petition's filing date.

The petitioner submits a letter dated July 15, 2010 from [REDACTED] of the [REDACTED] in San Francisco, California to [REDACTED] of the petitioner's temple, noting that both temples follow the same denomination of [REDACTED]. The petitioner submits an additional letter dated September 5, 2011 from [REDACTED] of the [REDACTED] in San Francisco, California, stating that the beneficiary continuously served its temple as a Buddhist preacher from July of 2006 until July of 2010 when he was permanently transferred to work for the petitioner's temple. In the letter, [REDACTED] does concede, however, that the beneficiary performed religious work for the [REDACTED] in Santa Rosa, California from November of 2007 until July of 2010.

These arguments are not persuasive, as the R-1 petition must be filed by the alien's prospective employer. 8 C.F.R. § 214.2(r)(7). In this instance, the [REDACTED] in San Francisco, California filed the R-1 petition, not the denomination of [REDACTED] in the United States. 8 C.F.R. § 214.2(r)(13).

8 C.F.R. § 274a.12(b) provides, in pertinent part:

*Aliens authorized for employment with a specific employer incident to status.* The following classes of non-immigrant aliens are authorized to be employed in the United States by the specific employer and subject to the restrictions described in the section(s) of this chapter indicated as a condition of their admission in, or subsequent change to, such classification...

(16) An alien having a religious occupation, pursuant to § 214.2(r) of this chapter. An alien in this status may be employed only by the religious organization through whom the status was obtained;

The regulation at 8 C.F.R. § 214.1(e) states, in pertinent part:

*Employment...* Any other nonimmigrant in the United States may not engage in an employment unless he has been accorded a nonimmigrant classification which authorizes employment or he has been granted permission to engage in employment in accordance with the provisions in this chapter. A nonimmigrant who is permitted to engage in employment may engage only in such employment as has been

authorized. Any unauthorized employment by a non-immigrant constitutes a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act.

The regulation at 8 C.F.R. § 204.5(m)(4) prohibits USCIS from considering work that was not “in lawful immigration status” and any “unauthorized work in the United States.” The regulation at 8 C.F.R. § 204.5(m)(11) requires that “qualifying prior experience . . . must have been authorized under United States immigration law.” Therefore, the regulations, separately and together, require that USCIS must have affirmatively authorized the beneficiary to perform any claimed religious employment while in the United States. The record reflects that the beneficiary was not in an authorized immigration status allowing him to work in the two-year period immediately preceding the filing of the visa petition, as he worked for the [REDACTED] in Santa Rosa, California and for the petitioner instead of for the [REDACTED] in San Francisco, California as authorized on his R-1 nonimmigrant visa. Accordingly, any work that he may have performed in an unauthorized status, such as the work that he did for the [REDACTED] and for the petitioner, would interrupt the continuity of the qualifying work experience.

Under 8 C.F.R. §§ 204.5(m)(4) and (11), the petition cannot be approved, because the beneficiary’s religious employment in the United States during the qualifying period was not authorized under United States immigration law.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the AAO will dismiss the appeal.

**ORDER:** The appeal is dismissed.