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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



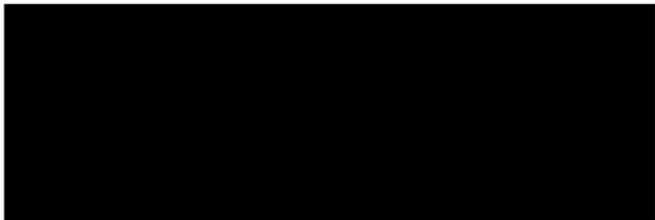
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DATE: **AUG 14 2012** OFFICE: CALIFORNIA SERVICE CENTER FILE:

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 monastery. 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 minister. 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 October 18, 2010. 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 stated that it would not be providing the beneficiary with any compensation, salary, or wages. The petitioner stated that the beneficiary lives in the temple community and that the community makes donations to support his daily living expenses. The petitioner indicated that the beneficiary last arrived in the United States on April 18, 2010. Therefore, the beneficiary was not in the United States throughout the entire two-year qualifying period. On the Form I-360, under "Current Nonimmigrant Status," the petitioner wrote "R-1" with an expiration date of October 17, 2012. The record shows that the beneficiary previously entered the United States as an R-1 nonimmigrant on July 20, 2008 with authorization to work for the [REDACTED] temple in Aldie, Virginia. With the petition, the petitioner submitted a letter from [REDACTED] the abbot of the [REDACTED], dated September 29, 2010, stating that the beneficiary traveled to Thailand to take care of his ailing father on January 20, 2010 and subsequently returned to the United States on April 18, 2010. This letter and an accompanying letter from [REDACTED]

██████████, the abbot of the petitioner's temple, dated October 13, 2010, both confirm that the beneficiary began working for the petitioner's temple on April 18, 2010.

The director denied the petition on July 14, 2011, finding that the beneficiary had engaged in unauthorized employment for the petitioner from April 18, 2010 until the petition's filing date, October 18, 2010. The director highlighted that the beneficiary had possessed R-1 nonimmigrant status to work as an employee of the ██████████ in Aldie, Virginia rather than for the petitioner's temple, a separate organizational unit.

On appeal, counsel asserts that the Dhammayut Order in the United States and its appointed Board Members oversee all of the activities of the petitioner's temple and of the ██████████, which are two separate branches under this order. Counsel first claims that the ██████████ is the beneficiary's actual employer. Counsel also contends that the beneficiary never fell out of status because he performed the same duties at both temples and because his employment was continuous. 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, ██████████ filed the R-1 petition, not the Dhammayut Order. 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.

Accordingly, any work performed by the beneficiary other than for the R-1 petitioning organization would have been a violation of status and would render such employment non-qualifying for the immigrant petition.

Counsel additionally asserts that the beneficiary took vows to become a monk and that his services are voluntary and do not command a salary. Counsel states that the beneficiary's unpaid religious services do not constitute employment and that the beneficiary had not been engaged in unauthorized employment. The AAO is not persuaded by this argument.

First, counsel's claim of the beneficiary's volunteer work during the requisite period is non-qualifying. In the preamble to the proposed rule, USCIS recognized that although "legitimate religious work is sometimes performed on a voluntary basis . . . allowing such work to be the basis for . . . special immigrant religious worker classification opens the door to an unacceptable amount of fraud and increased risk to the integrity of the program." *See* 72 Fed. Reg. 20442, 20446 (April 25, 2007).

For purposes of establishing qualifying work experience for the instant visa classification, the regulation at 8 C.F.R. § 204.5(m)(11) requires that the past employment must be compensated either through salaried or non-salaried compensation. Although the regulation at 8 C.F.R. § 204.5(m)(11)(iii) provides that a beneficiary could be self-supporting, such support is only allowed in very limited circumstances outlined at 8 C.F.R. § 214.2(r)(11)(ii), which involve the beneficiary's participation in an established program for temporary, uncompensated missionary work. The petitioner has not shown or claimed that the beneficiary participated in such a program.

Furthermore, while counsel argues that the beneficiary was essentially a volunteer as he was not paid for his services, the petitioner indicated that the beneficiary was provided with food and shelter. The Board of Immigration Appeals (BIA) held that an alien who "receives compensation in return for his efforts on behalf of the church" is "employed" for immigration purposes, even if that compensation takes the form of material support rather than a cash wage. *See Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982).

The AAO also finds that the petitioner failed to establish that the beneficiary's employment was continuous, as he was in Thailand from January 20, 2010 until April 18, 2010. Although some breaks in employment may not affect the alien's continuous employment, the petitioner has not demonstrated that the beneficiary meets the requirements of 8 C.F.R. § 204.5(m)(4) for a qualifying break.

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 functions while in the United States. The record reflects that the beneficiary was not in an authorized immigration status during the full two years immediately preceding the filing of the visa petition, as he

worked for the petitioner instead of the [REDACTED]. Accordingly, any work that he may have performed in an unauthorized status, such as what he did for the petitioner, would interrupt the continuity of the qualifying work experience.

The petitioner has failed to submit sufficient documentation to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the petition.

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.