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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**

C1

[Redacted]

Date: **AUG 21 2012**

Office: CALIFORNIA SERVICE CENTER

FILE: [Redacted]

IN RE:

Petitioner:
Beneficiary:

[Redacted]

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 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 meditation and study center. 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 minister. The director discussed the negative findings of site visits and determined that the petitioner failed to establish that it is able to offer the beneficiary a qualifying, full time position and that it is a bona fide non-profit religious organization.

On appeal, the petitioner submits a brief from counsel, copies of bank statements, a rental contract/invoice from University Settlement at the Houston Street Center, attendance sheets from the petitioner's classes at University Settlement, a 2011 Form 941, Employer's Quarterly Federal Tax Return, copies of bills for utilities, insurance, and water delivery, a schedule of events from the petitioner's website, and documentation related to The Rato Dratsang Foundation.

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 to be discussed is whether the petitioner has established that the beneficiary will be employed in a qualifying, full-time position.

The USCIS regulation at 8 C.F.R. § 204.5(m)(2) provides that in order to be eligible for classification as a special immigrant religious worker, an alien must:

(2) Be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position in one of the following occupations as they are defined in paragraph (m)(5) of this section:

- (i) Solely in the vocation of a minister of that religious denomination;
- (ii) A religious vocation either in a professional or nonprofessional capacity; or
- (iii) A religious occupation either in a professional or nonprofessional capacity.

The USCIS regulation at 8 C.F.R. § 204.5(m)(12) reads:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

The Form I-360 petition was filed on November 20, 2009. On the petition, the petitioner indicated that it would employ the beneficiary as a minister and that he would "undertake his ministry at The Tibet Center's current location at: 25 Washington Street, Suite 304, Brooklyn, New York, 11201." The petitioner described the beneficiary's proposed daily duties on the petition as follows:

To teach Buddhism to the members of The Tibet Center, to guide the individual members in their practice of Buddhism, to advise them in their own spiritual and personal lives, to lead study seminars, to lead meditations, to perform rites and ceremonies for the Buddhist community, give public lectures and talks in rented halls when The Tibet Center hosts events and carry out basic ministerial duties such as personal counseling and outreach.

Accompanying the petition, the petitioner submitted a copy of its November 2009 teaching schedule, which indicated that a "Beginners Buddhism class" was held on Mondays at 7pm, "White Tara Meditation" was held on Saturdays from 2pm to 4pm, and a lecture on Tibetan Buddhist Philosophy was held on Tuesday, November 3, at 7pm. The schedule also included "Open Meditation" Monday through Friday from 2pm to 7pm.

On February 11, 2010, USCIS issued a request for evidence which instructed the petitioner to submit documentary evidence to prove religious activity at 25 Washington Street, Suite 304 in Brooklyn, New York.

In a letter responding to the notice, counsel for the petitioner stated that "as of December 31, 2009," the petitioner "no longer has its place of worship and religious activity" at the Washington Street address. Counsel

stated that "The Tibet Center is now holding its religious functions at 239 Center Street, Loft 4F, New York, New York 10013." As "proof of its time and presence at 25 Washington Street," the petitioner submitted a canceled check from the petitioning organization listing its address as 25 Washington Street, Suite 304, as well as an invoice for books ordered addressed to the petitioner at that address. The petitioner also submitted a Form 941 Employer's Quarterly Federal Tax Return for the fourth quarter of 2009 which listed the Washington Street address, copies of the petitioner's utility bills and Citibank checking statements, and a brochure with information on events held by the petitioner at that address. Additionally, the petitioner submitted a notarized letter from [REDACTED] dated March 8, 2010, which identified [REDACTED] as the "owner/landlord of Loft 4F at 239 Center Street in New York, New York, 10013," and stated that since January 1, 2010, she has donated the use of that space to the petitioner. She further stated:

The Tibet Center carries out its functions at this space and will do so indefinitely until it is able to acquire and renovate a new place of worship and headquarters in New York City. The Tibet Center was forced out of its most recent place of worship and headquarters at the end of 2009 when the building was slated for residential conversion.

As evidence of its "ongoing existence, operation and future," the petitioner submitted evidence relating to "The Tibet Center's joint sponsorship and hosting of His Holiness The Dalai Lama's visit to New York City and teaching of Buddhist texts at Radio City Music Hall from Thursday, May 20th to Sunday May 23rd of 2010."

The record indicates that, on April 22, 2011, USCIS received a letter from counsel for the petitioner requesting an update on the instant petition and the beneficiary's Form I-485, Application to Register Permanent Residence or Adjust Status. The letter also noted that the petitioner's "physical address" had changed to "253 36th Street, 6th Floor, Brooklyn, NY 11232."

On May 5, 2011, USCIS issued a Notice of Intent to Deny (NOID) the petition which stated, in pertinent part:

The USCIS is in possession of the following information: Site inspections were conducted on July 27, 2010 and January 14, 2011, and revealed that the petitioning organization does not exist as claimed on the Form I-360 petition. The first inspection was conducted at the location indicated on the petition: 25 Washington Street, #304, Brooklyn, NY 11201. The inspecting officer stated this facility is under construction and no businesses or organizations are currently located at the facility. The organization did not have any signage at the facility. The manager of the construction company stated the building is currently empty due to the construction. The second inspection was conducted at the new location advised by the petitioner: 239 Center Street, Loft 4F, New York, NY 10013. The inspecting officer stated there is no Tibet Center, Inc. located at the aforementioned address. Access to the building was denied and there was no organization named "Tibet Center, Inc." on the directory. Several bells were attempted; however, no one heard of the petitioning organization. Suites #2A, 3A, 3B, 4A, 5A, and 5B were queried; however no one heard of the organization. It is noted that there is no Loft 4F at 239 Center Street, New York, NY. Directory assistance was called; however there was no listing for the Tibet Center, Inc. in New York City or the surrounding areas.

In a letter responding to the NOID, the petitioner stated the following:

From 2007 to 2010, The Tibet Center was located at 25 Washington Street, Brooklyn, NY 11201. The Tibet Center's tenure on Washington Street was brought to an end due to the fact that the owner decided to convert the building into condominiums. In 2010 The Tibet Center moved to its current offices at 253 36th Street, 6th Floor, Brooklyn, NY 11232, while simultaneously renting a single lecture room every Tuesday at 273 Bowery, New York, NY 10002 / University Settlement in Manhattan for a free weekly Buddhist philosophy class. The Tibet Center also holds prayers and quiet meditations only on special occasions at 239 Center Street, New York, NY 10013. We have consistently used P.O. Box 1873 New York, NY 10156 as a base to where we receive all correspondence.

The petitioner indicated in the letter that it is currently conducting fundraising toward the purchase of a permanent location for the organization. The petitioner submitted a February 2011 Verizon bill for the 253 36th Street address and invoices from University Settlement for Tuesday evening classroom rental during the months of January, February, March, July and August of 2010. The petitioner also submitted additional evidence of its prior use of the Washington Street address. Additionally, the petitioner submitted a March 1, 2010 letter from [REDACTED] stating that the petitioner "will be located at [239 Center Street, Suite 4F] until their new building has been constructed."

The petitioner did not provide any explanation regarding the investigating officer's inability to locate the petitioner's space at 239 Center Street, or his finding that there was no "Loft 4F" in the building. 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).

On October 20, 2011, USCIS issued a second NOID regarding an additional site inspection conducted on July 1, 2011 at the petitioner's 36th Street address. The NOID stated, in part:

After visiting the organization at 253 36th Street, 6th Floor, Brooklyn, NY 11232, it does not appear the space could accommodate more than one person. [REDACTED] (Office Manager, Ling At West Side Inc.) stated the only space rented to the petitioning organization, is a desk used by [REDACTED] [REDACTED] indicated the beneficiary, if hired, occasionally would go into the office to complete some administrative work, but would be praying, lecturing, and participating in public speaking engagements most of the time. [REDACTED] also indicated that occasionally he goes into the office located at 253 36th Street, 6th Floor Brooklyn, NY 11232, but when asked, [REDACTED] stated he has never heard of a [REDACTED]. Also there was no signage at 253 36th Street, 6th Floor Brooklyn, NY 11232, indicating the petitioning organization was located at or in the facility outside or inside. The name of the petitioning organization was also not listed in the facility's directory.

[REDACTED] was unable to give an accurate account of the beneficiary's work schedule. [REDACTED] stated he wasn't being hired in an administrative capacity, so he wouldn't spend a great deal of time at the organization's 253 36th Street, 6th Floor Brooklyn, NY 11232 location. Most of the beneficiary's time would be spent praying, teaching, and participating in public speaking engagements. An actual daily hourly number could not be given. [REDACTED] stated that based on the beneficiary's position, he would almost be on-call 24 hours a day.

Based on the abovementioned concerns, the organization's mere existence is vague. Further, it is uncertain whether the beneficiary will be working the requisite 35 or more hours a week, and if so, where and how.

In a letter responding to the October 20, 2011 NOID, the petitioner asserted that its offices have been located at the 253 36th Street address since January 2010, and that the space at that location is "more than sufficient for The Tibet Center to store all of its large Buddhist statues, books and office furniture." The petitioner also asserted that it has hosted two weekend events at the 253 36th Street location which were attended by over 80 people. The petitioner submitted a "video of the space at 253 36th Street to show that there is more than enough room for both [REDACTED] and the beneficiary," as well as documentation of its occupancy of that address and a notarized statement from [REDACTED]. In the statement, [REDACTED] asserted that the company offered the petitioner office and storage space beginning in January 2010 "until they are ready to purchase a permanent location." [REDACTED] also asserted that the petitioner's manager, [REDACTED] is in the office Monday through Friday and that [REDACTED] "has been at the office many times," including during "the religious seminars that we helped The Tibet Center host here in our space." [REDACTED] stated that, on the day of the site visit, "I was taken off-guard and was concerned that I would submit information that might somehow affect the Center's reputation."

The petitioner also submitted documentation of its continued Tuesday evening classroom rental at University Settlement. The petitioner stated: "Until a permanent location is found this would be the location where the Venerable [REDACTED] the beneficiary, would teach. He would also work at planning the future schedule of The Tibet Center, consulting with our senior teacher the [REDACTED]. Additionally, the petitioner submitted documentation regarding its finances and its ongoing religious activities and events, including its co-hosting of the [REDACTED] May 2010 talk at Radio City Music Hall and the petitioner's September 2011 release of the book "A Profound Mind," written by the [REDACTED] and edited by [REDACTED] [REDACTED] signatory of the instant petition.

On January 6, 2012, the director denied the petition, citing the October 20, 2011 NOID and, in part, finding that the petitioner is not operating in the capacity claimed on the petition and "failed to submit evidence to confirm the beneficiary will be working the requisite 35 or more hours a week." The director stated:

Upon review of the rental agreement between the petitioner and University Settlement, the beneficiary is only working three hours a week (i.e., Tuesdays from 6:30p.m. to 9:30p.m.). The rental agreement further shows the classroom will no longer be available after December 2011; therefore leaving the beneficiary with no job location.

On appeal, counsel for the petitioner asserts that the petitioner has submitted sufficient evidence to establish that the petitioner has continuously existed as a legitimate, active religious organization, and argues that a religious organization's existence "is not predicated solely on whether it has a permanent location or space." The petitioner submits additional evidence of the petitioner's ongoing existence and activities, including evidence of its continuing Tuesday evening classroom rental at University Settlement with copies of "sign in" sheets showing attendance at the petitioner's recent classes. With regard to the director's finding that the beneficiary would work three hours per week, counsel for the petitioner argued as follows:

The California Service Center fails to take into account that in order for the beneficiary to provide weekly instruction and services it requires hours of preparation no different than a priest preparing a homily or a pastor a sermon. The California Service Center also omits to mention other pertinent duties of the beneficiary including outreach/ministry to Petitioner's congregation, public speaking engagements (which can be corroborated by referencing Petitioner's website and recalling that Petitioner is a well-known institution in New York City responsible in part for all of His Holiness [REDACTED] public visits to New York City since the 1970s) and prayer/meditation. As put forth openly from the outset of this I-360 Petition, [REDACTED] the spiritual leader of The Tibet Center and also a reincarnate lama, is nearly ninety years old. There is little doubt that [REDACTED] can continue with his duties and obligations indefinitely and the beneficiary's work schedule would be taken over by the duties and obligations normally carried out by him.

The petitioner has submitted sufficient evidence to establish its continued existence and operation. To the extent that the director questioned the current existence of the petitioning organization, the AAO will withdraw that finding. The AAO agrees with the director, however, that the petitioner has not established that it is able to offer the beneficiary a qualifying, full-time position.

At the time of filing the petition, the petitioner indicated that the beneficiary's daily duties would include teaching Buddhism, guiding and advising individuals, leading seminars, leading meditations, performing rites and ceremonies, giving public lectures and talks, and carrying out "basic ministerial duties such as personal counseling and outreach." The petitioner has submitted evidence of its use of a classroom for three hours on Tuesday evenings where the beneficiary would teach Buddhism, and counsel notes that such teaching requires additional hours of preparation. However, the petitioner has not sufficiently explained where and how the beneficiary will be able to regularly perform the other ministerial duties listed in the petition, such as performing rites and ceremonies, and guiding, advising and counseling individual members.

The petitioner has indicated that the space at 253 36th Street is used by the petitioner for office space and storage. During the compliance review, the signatory of the petition, [REDACTED] indicated to the investigating officer that the beneficiary "occasionally would go into the office to complete some administrative work." Although the petitioner asserted that it has held weekend seminars at that location, it has not asserted that the beneficiary would be counseling individuals or carrying out any other ministerial or religious duties at 253 36th Street. The petitioner has also submitted evidence regarding the donated use of space at the 239 Center Street, Loft 4F address. However, in its letter responding to the May 5, 2011 NOID, the petitioner indicated that the space is used for "prayers and quiet meditations only on special occasions." Accordingly, the petitioner has not established where or how the beneficiary will be performing the duties listed in the petition on a full-time basis as required under 8 C.F.R. § 204.5(m)(2).

The second issue to be discussed is whether the petitioner has established that it is a bona fide non-profit religious organization in the United States.

The U.S. Citizenship and Immigration Service (USCIS) regulation at 8 C.F.R. § 204.5(m)(3) provides that in order to be eligible for classification as a special immigrant religious worker, an alien must be coming to work for a bona fide non-profit religious organization in the United States, or a bona fide organization which is affiliated with the religious denomination in the United States. The regulation at 8 C.F.R. § 204.5(m)(5) states,

in pertinent part:

(5) Definitions. As used in paragraph (m) of this section, the term:

Bona fide non-profit religious organization in the United States means a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the IRS confirming such exemption.

Bona fide organization which is affiliated with the religious denomination means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code and possessing a currently valid determination letter from the IRS confirming such exemption.

The regulation at 8 C.F.R. § 204.5(m)(8) states:

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or
- (iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, as something other than a religious organization:
 - (A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;
 - (B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;
 - (C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and

(D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

On the Form I-360 petition, the petitioner listed its IRS Tax # as 13-2872904. Accompanying the petition, the petitioner submitted copies of determination letters from the IRS, dated June 4, 1975 and July 26, 2002, confirming that the petitioning organization is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code. The July 26, 2002 letter listed the petitioner's Federal Identification Number as provided on the petition.

In the February 11, 2010 Request for Evidence, USCIS instructed the petitioner to submit an "IRS 501(c)(3) Tax Exempt Certification," noting that the determination letter must indicate the petitioner's IRS Employer Identification Number. In response, the petitioner resubmitted a copy of the July 26, 2002 determination letter.

In the Notices of Intent to Deny issued on May 5, 2011 and October 20, 2011, quoted above, the director discussed the negative findings of various site visits and questioned whether the petitioner continued to exist as an organization. In the January 6, 2012 decision, the director again discussed the site visits and concluded that the petitioner had not established that the petitioner is a "bona fide organization in the United States."

On appeal, counsel argues that the petitioner has submitted "overwhelming and credible evidence that it is a bona fide religious organization," including evidence in compliance with the regulatory requirements of 8 C.F.R. § 204.5(m)(8).

As discussed above, the AAO finds that the petitioner has submitted sufficient evidence of its continued existence and operation. Further, the AAO agrees with counsel that the petitioner has established that it is a bona fide non-profit religious organization under 8 C.F.R. §§ 204.5(m)(5) and (8). The AAO will therefore withdraw the director's finding with respect to this issue.

As the AAO agrees with the director's finding that the petitioner failed to establish that it will employ the beneficiary in a full-time position, 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.