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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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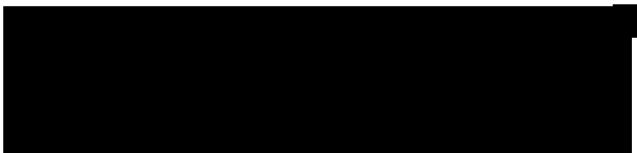
Date: **AUG 22 2012** Office: CALIFORNIA SERVICE CENTER

FILE: [Redacted]  
WAC: [Redacted]

IN RE: Petitioner: [Redacted]  
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:



**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 head monk. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous, qualifying work experience immediately preceding the filing date of the petition and that the petitioner has the ability to compensate the beneficiary. The director also found that the petitioner failed to resolve inconsistencies in the record.

On appeal, the petitioner submits a brief from counsel, a letter from the petitioner, documentation relating to the beneficiary's address, signatures of individuals attesting to the provision of various support to the beneficiary and as witness to his service for the petitioning organization, schedules of ceremonies and festivals, photographs, letters from other Buddhist temples, letters and schedules relating to classes that the beneficiary has taken and given, and Certificates of Change of Directors or Officers of Non-Profit Corporations.

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 has the requisite two years of continuous, lawful, qualifying work experience during the two years immediately preceding the filing of the petition.

The U.S. Citizenship and Immigration Service (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 petition was filed on October 20, 2010. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work in lawful immigration 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.

On the Form I-360 petition, the petitioner stated that it would employ the beneficiary as head monk and that, because monks are not allowed to receive a salary, it would provide "food, personal expenses, and possible need for medication, and living expenses." The petitioner stated that the beneficiary would be working at [REDACTED] in Fitchburg, Massachusetts "and around

New England area.” The [REDACTED] address was also listed as the beneficiary’s current home address on the petition.

On July 29, 2010, USCIS issued a Request for Evidence, in part requesting additional evidence regarding the work location. The notice also instructed the petitioner to submit evidence regarding the beneficiary’s work history during the two-year qualifying period immediately preceding the filing of the petition, including experience letters and evidence that the employment was compensated. The notice stated:

For non-salaried compensation, please submit:

-Evidence showing the beneficiary’s residence and work location from the time he was admitted into the U.S. until the filing date.

-Evidence that the employer has provided and paid compensation for the beneficiary, including housing, meals, medical, dental, clothing expenses, insurance/travel expenses, stipends, retirement/pension contribution, and other incidental expenses.

In a letter dated April 26, 2010, submitted in response to the notice, the petitioner indicated that it has employed the beneficiary since his arrival in the United States in December of 2008. In the letter, the petitioner also stated the following:

Our temple is served both by the monks and the members of the community who attend its services and ceremonies. The monks live fulltime at the temple, have taken vows of poverty and celibacy, and observe strict daily regimes of prayer and study. Usually, about fifty-to-seventy people attend the services every month conducted by the months [sic], each ceremony lasting a few hours. The members and attendees provide for the monks’ basic needs, such as food, clothing, and transportation.

In response to the notice, the petitioner submitted photographs of the petitioning temple, including pictures with signage identifying the temple. The petitioner also submitted documentation regarding its ownership of the property at [REDACTED] including a Quitclaim Deed for a parcel of land at that address dated May 28, 1996, and a Discharge of Mortgage certificate indicating that the mortgage on a property held by the petitioner was paid in full as of September 30, 2003. The documentation also included a 2010 application for Massachusetts property tax relief on which the petitioner asserted ownership of the [REDACTED] property, an “Unofficial Property Record Card” listing the petitioner as owner of the property at [REDACTED] copies of utility bills for the property, and correspondence from an architecture firm regarding proposed architectural services on the property.

Additionally, the petitioner submitted copies of the visa page of the beneficiary's passport and his I-94 departure record, indicating that the beneficiary entered the United States on December 7, 2008 in R-1 nonimmigrant status which authorized his employment with the petitioner until December 7, 2011. An October 5, 2011 letter from the chief abbot of Wat Somsanouk Temple in Vientiane, Laos, stated that the beneficiary "used to voluntarily work at Wat Samsanouk Temple during the date of October of 2008 to December 2008."

On July 6, 2011, the director denied the petition, in part finding that the petitioner had not submitted verifiable evidence of past compensation for the beneficiary's employment and evidence to show continuity of employment during the qualifying period. The director therefore determined that the petitioner had failed to establish that the beneficiary had the requisite two years of qualifying work experience immediately preceding the filing of the petition.

In a letter submitted on appeal, the petitioner states the following:

Since his arrival on December 20, 2008, the Venerable Monk Vongkhamdy Syha had been working tirelessly day and night to serve the temple. As a matter of Buddhist tradition, Buddhist Monk devotes his life for religion and mankind. ... He works with *no regular salary, no regular compensation*. All his basic needs are foods, beverages, and living necessities. These basic needs and living necessities was offered by the members and supporters of the temple, on a volunteer basis. ...

This practice is somewhat different from the practice of Christianity for which Priest and Pastor received *regular salary and or regular compensation from parishioner*. For this matter, it is nearly impossible to provide to the Services' request of any verifiable evidence of past compensation paid for the beneficiary's employment, except evidence in the form of affidavits from the members and supporters of the temple.

As evidence of the beneficiary's residence at the petitioning temple during the two years preceding the filing of the petition, the petitioner submits copies of bank statements addressed to the beneficiary at "159 Richardson Rd" from December 2008 to January 2009, August to September 2010, and June to July 2011, as well as copies of the beneficiary's Massachusetts temporary photo Identification Card, Learner's Permit, and temporary Driver's License dated April 13, 2009, January 19, 2010, and June 25, 2011 respectively, all listing [REDACTED] as the beneficiary's address. The petitioner also submits an attestation statement, signed by 13 individuals, which states in pertinent part:

At our temple in Fitchburg, MA, the monks prepare their own breakfast, using the food and drink donated during monthly almsgiving ceremonies or bought with money donated during the same monthly ceremonies. However, outside of the almsgiving ceremonies, the monks are supported by a dedicated small number of members of the temple and community who prepare, cook, and deliver food and

drink nearly every day to the monks for their major, and last, meal of the day: lunchtime.

By signing below, I certify that I have helped to prepare and give food and drink to the monks, including Monk [REDACTED] at the temple, for the last meal of the day (lunch).

The petitioner submits a similar attestation signed by 21 individuals regarding the provision of "clothing (robes)" to the monks including the beneficiary. Photographs are provided showing offerings of food, money and clothing. The petitioner also submits attestations signed by many individuals certifying that they have witnessed the beneficiary serving as a monk at the petitioning temple and in various ceremonies both at the petitioning temple and elsewhere. Additionally, the petitioner submits an Official Ceremony and Festival Schedule 2010 and 2011, identifying almsgiving ceremonies.

In addition, the petitioner submits letters from other Buddhist temples regarding the beneficiary's service at their temples during various ceremonies. A letter from Watpa Buddharam of Virginia, Inc. states the following regarding the beneficiary:

He has lived at Wat Lao Dhammaram, [REDACTED] Fitchburg, MA 01420 and has been a tremendous volunteer to our temple.

His many years of experience in Buddhism help to improve the spirituals and practicing of Buddhism in our community. By the reasons, the abbot of Watpa Buddharam of Virginia Inc and the Board members of Watpa Buddharam of Virginia Inc have invited Syha Vongkhamdy to help developing our Lao community in Virginia every summer time since 2009 and our community always needs his services as a Buddhist monk, teaching Buddhism, Meditation and Lao cultures for Lao-American youths.

The petitioner submits a chart entitled "List of All Religious Events for Monk [REDACTED] Vongkhamdy, Chronologically. In addition to listing events lasting between one and seven days held at the petitioning temple as well as at various other temples, the chart includes the following entry:

General Dates		
Date	Place	Event
Throughout the summer months since 2009	Watpa Buddharam of Virginia, Partlow, Virginia	Various ceremonies

The AAO finds that the petitioner has submitted sufficient evidence to establish that it provided the beneficiary with non-salaried compensation including room and board during his employment at the petitioning temple. However, the AAO agrees with the director that the petitioner has not

established the beneficiary's continuous qualifying employment during two years immediately preceding the filing of the petition and further finds that the petitioner has not established that the beneficiary maintained lawful immigration status during the qualifying period.

Although the petitioner submitted documentary evidence regarding the beneficiary's non-salaried compensation from the petitioning temple, the letter from Wat Somsanouk Temple in Laos states that the beneficiary "worked voluntarily" as a monk at that temple until December 2008 without providing any evidence of non-salaried compensation provided to the beneficiary as required by 8 C.F.R. § 204.5(m)(11).

Additionally, the regulation at 8 C.F.R. § 214.2(r)(2) provides that "[a]n alien may work for more than one qualifying employer as long as each qualifying employer submits a petition plus all additional required documentation as prescribed by USCIS regulations."

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

In this instance, the beneficiary's R-1 status during the qualifying period only authorized his employment with the named employer, Wat Lao Buddharam Buddhist Temple of Fitchburg, Inc. The evidence submitted on appeal, however, indicates that the beneficiary spent the summers of 2009 and 2010 working for Watpa Buddharam of Virginia, Inc. The record does not indicate that the beneficiary held authorization to work for that employer, therefore any such employment would not be considered qualifying experience under 8 C.F.R. § 204.5(m)(11) and would constitute a failure to maintain lawful status as required by 8 C.F.R. §204.5(m)(4).

For the reasons discussed above, the AAO agrees with the director's determination that the petitioner failed to establish that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition.

The second issue to be discussed is whether the petitioner has established how it intends to compensate the beneficiary. The USCIS regulation at 8 C.F.R. § 204.5(m)(10) states:

*Evidence relating to compensation.* Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

The petitioner stated on the Form I-360 petition that the beneficiary will receive only non-salaried compensation in the form of room, board, living expenses and medical expenses. As discussed above, the petitioner submitted evidence regarding its ownership of the temple property at 159 Richardson Road, the beneficiary's past residence at that address, and signed attestations regarding the provision of food and clothing by members and attenders of the petitioning temple.

Additionally, in response to the Request for Evidence, the petitioner submitted copies of its financial statements for 2009 and 2010 asserting net assets at the end of the year of \$149,678 for 2009 and \$152,504 for 2010. The petitioner also submitted copies of its checking account statements for January 13, 2011 through April 12, 2011 listing "Average Daily Balances" of between \$7,540.99 and \$11,511.79. A June 29, 2010 letter from Worker's Credit Union stated that the petitioner had a current account with a balance of \$23,896.16.

In her decision, the director found that the petitioner failed to submit sufficient evidence to establish its ability to compensate the beneficiary.

The AAO will withdraw the director's finding on this issue. The AAO finds that the petitioner has submitted sufficient evidence of past non-salaried compensation provided to the beneficiary and of its continuing ability to provide such non-salaried compensation.

Finally, the director found that the petitioner failed to resolve inconsistencies in the record regarding the identity of the petitioning organization's president and the size of its membership.

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). 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).

In her decision, the director described the discrepancies in the record as follows:

In regarding who is the actual president of the organization, records show that:

- The petition was filed and signed by president [REDACTED] Norkham on August 20, 2010.
- On the amended petition that was submitted in the RFE response, the amended petition was again signed by the president [REDACTED] on May 14, 2011. Also, in the response, a list of Temple members showing the same president's signature at the end of the list (Exhibit 2).

- But, in Exhibit 4 of the response, the petitioner submitted a Proposal for Architectural Services for upgrading work regarding the Temple's existing facilities. The proposal was dated May 12, 2011 when it was created initially. The document shows that another president named [REDACTED] signed the authorization to proceed with the work.

As another discrepancy, the above Temple membership list has only 634 names and in Exhibit 9 "BACKGROUND AND RELIGION EMPLOYMENT OF BUDDHIST MONK SYSHA [sic] VONGKHAMDY", the petitioner stated that,

Usually, about fifty-to-seventy people attend the services every month conducted by the months [sic], each ceremony lasting a few hours.

But the petitioner listed 2,000 members and 26 employees on page 5 [of] the petition. Thus, the filing record and the response were inconsistent to show that the petitioner has provided information truthfully. The petitioner has not provided evidence that the Temple has either hosted 50 members, 600 or 2,000 members meetings.

On appeal, counsel for the petitioner states the following with regard to the inconsistencies concerning the petitioner's president:

The Wat Lao Dhammaram (Buddhist temple) of Fitchburg, Inc. is a non-profit organization which its officer of the organization is duly elected when his term expires. As indicated, at the time the I-360 was prepared and filed on August 20, 2010, Mr. [REDACTED] was a legally elected President of the Organization. However, thereafter, when the organization responded to the Services' request for additional evidence, Mr. [REDACTED] term of the office was expired and he was replaced by the newly elected president of the temple, Mr. [REDACTED]

The petitioner submits two Commonwealth of Massachusetts Certificates of Change of Directors or Officers of Non-Profit Corporations. One of the forms was undated, and listed [REDACTED] as the petitioner's president with a term of office expiring on July 31, 2011. The second form, signed "this 5/14 day of May, 2011," listed [REDACTED] as president with a term of office expiring on July 31, 2013. No clarification was provided regarding the actual start date of Mr. [REDACTED] presidency in May of 2011. Furthermore, as noted by the director, the documents submitted by the petitioner show that Mr. [REDACTED] signed a document as president on May 12, 2011, while Mr. [REDACTED] signed the amended petition as president on May 14, 2011. Therefore, the AAO agrees that the petitioner has not sufficiently resolved this issue.

With regard to the petitioner's membership, counsel for the petitioner states the following on appeal:

The above temple memberships of 634 listed was in no way intent to be exhaustive. The 2000 members was in no way intent to exact. The number is a rough estimate based on the incoming and outgoing members and supporters throughout the *Commonwealth of Massachusetts and the adjacent state*. Please not [sic] that the temple was not flooded with 2000 members and supporters every day. The 25 volunteers (so-called employee) were not needed at the temple every day. The numbers of help could be more or less depends on the occasion and ceremonies. It is burdensome to the petitioner for the Services to alleges that the petitioner is not being consistent and require the petitioner to provide evidence that the Temple has either 50 members, 600 or 2000 members meeting. It is very unreasonable for the Services to require the petitioner to come up with this evidence.

Counsel did not provide any further explanation of how the petitioner arrived at its estimate of 2000 members, and the petitioner did not submit any documentary evidence in support of counsel's explanation. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

For the reasons discussed above, the AAO agrees that the petitioner has not sufficiently resolved the discrepancies noted by the director.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.