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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: **FEB 24 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 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 and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 monk. The director determined that the petitioner had not established that it is a bona fide nonprofit religious organization and that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the petition.

Counsel asserts on appeal that the director's findings were erroneous and not based on the entirety of the record. Counsel submits a letter and additional documentation in support of the appeal.

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 presented on appeal is whether the petitioner has established that it is a bona fide nonprofit religious organization.

The regulation at 8 C.F.R. § 204.5(m)(5) provides, in pertinent part:

Tax-exempt organization means an organization that has received a determination letter from the IRS [Internal Revenue Service] establishing that it, or a group that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the IRC [Internal Revenue Code] of 1986 or subsequent amendments or equivalent sections of prior enactments of the IRC.

Additionally, the regulation at 8 C.F.R. § 204.5(m)(8) provides:

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 . . . (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 [IRC] of 1986, or subsequent amendment or equivalent sections of prior enactments of the [IRC], 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.

With the petition, filed on August 31, 2009, the petitioner submitted a copy of its articles of incorporation, a copy of its certificate of incorporation with the State of Alabama, and a copy of a September 10, 1999 letter from the State of Alabama Department of Revenue advising the petitioner about the state's requirements for applying for a permit as a corporation. In a February 25, 2010 request for evidence (RFE), the director instructed the petitioner to submit documentation of its tax-exempt status in accordance with the above-cited regulation.

In an undated letter submitted in response, the petitioner, through [REDACTED] who identified himself as the petitioner's president, stated that it had applied for tax-exempt status but that the documentation was "misplaced by members of the committees." The petitioner submitted a copy of a February 5, 2010 letter from the IRS acknowledging receipt of the petitioner's application for exemption from federal income tax. The director determined that the petitioner had failed to establish that it is a bona fide nonprofit religious organization.

On appeal, [REDACTED] stated in a June 1, 2010 letter that the petitioner had applied for an IRS determination letter and that the IRS had requested additional documentation. He stated the petitioner had spoken to an IRS "specialist" in April, had sent the requested documentation, and was currently awaiting a reply. The petitioner submitted photographs that counsel states "establish the legitimacy of the temple as a bona fide religious organization."

The petitioner submitted none of the documentation required by the regulation at 8 C.F.R. § 204.5(m)(8). Additionally, the record reflects that the petitioner did not apply for a determination letter from the IRS until after the petition was filed. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

The petitioner has failed to establish that it is a bona fide nonprofit religious organization as defined by the regulation at 8 C.F.R. § 204.5(m)(5).

The second issue on appeal is whether the petitioner has established that the beneficiary worked continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the visa petition.

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

- (4) Have been working in one of the positions described in paragraph (m)(2) of this section, either abroad or in lawful immigration status in the United States, and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. The prior religious work need not correspond precisely to the type of work to be performed. A break in the continuity of the work during the preceding two years will not affect eligibility so long as:

- (i) The alien was still employed as a religious worker;
- (ii) The break did not exceed two years; and
- (iii) The nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

Therefore, the petitioner must show that the beneficiary worked 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. Accordingly, the petitioner must establish that the beneficiary was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

The 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.

In an undated letter submitted with the petition, [REDACTED] who also identified himself as the petitioner's president, stated that the beneficiary "has been residing at out Temple since October 16, 2008. He came to us from Vientiane, Laos to educate and preach the Buddhist religion to a congregation of about 300-400 members." The petitioner stated that Buddhist monks are not paid for their services, but that "[a]ll necessities are provided through donations from members of the community" and that "food, clothing, medicine and room and board are provided by the Temple." The petitioner submitted no other documentation to establish that the beneficiary worked during the qualifying period.

In her RFE, the director instructed the petitioner to provide documentation to establish the beneficiary's qualifying work experience, including "experience letters written by the previous and current employers." In response, the petitioner stated that the beneficiary lives at the temple and provided a schedule of the religious services for the organization. The petitioner also provided a copy of a March 26, 2010 "certificate of teaching" from Champasak Lower and Upper Secondary School certifying that the beneficiary taught "Dharma from level 1 to level 6, 6 hours per week . . . in the school year 2007-2008, which started on the 1st of September 2007 to 25th of June 2008." The petitioner submitted no other documentation of the beneficiary's work in Laos.

In denying the petition, the director found that the letter from the school "does not state that the beneficiary performed any religious work. Furthermore, it does not address the questions requested by this Office . . . pertaining to the specific job duties, number of hours worked per week, the form and amount of compensation, and the level of responsibility/supervision."

On appeal, the petitioner's president outlines the beneficiary's duties at the Champasak Lower and Upper Secondary School, attesting that the work at the school was religious in nature. However, the petitioner submits no documentation from Champasak Lower and Upper Secondary School to verify any of the information contained in its letter. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The petitioner has submitted no comparable documentation as outlined in the regulation at 8 C.F.R. § 204.5(m)(1).

The petitioner has failed to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the visa petition.

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.