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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: JUL 0 5 2012 OFFICE: CALIFORNIA SERVICE CENTER [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, (the director) initially approved the employment-based immigrant visa petition on May 2, 2005. On further review, the director determined that the self-petitioner was not eligible for the visa preference classification. Accordingly, the director properly served the self-petitioner with a Notice of Intent to Revoke (NOIR) the approval of the preference visa petition and her reasons therefore and subsequently exercised her discretion to revoke the approval of the petition on August 7, 2008. On December 17, 2008, the Administrative Appeals Office (AAO) remanded the matter for consideration under the new regulations. On June 25, 2009, the director again denied the petition and, following the AAO's instructions, certified the decision to the AAO for review. The AAO will uphold the director's decision.

As stated, the instant petition was previously approved on May 2, 2005 and subsequently revoked. The AAO's remand for application of the new regulation was in error. Accordingly, for purposes of this certification, the AAO withdraws its previous finding and focuses its review on the original decision of the director which was correctly based upon the regulations in effect at the time the petition was originally approved. As the AAO conducts de novo review, it will consider all evidence of record, including any relevant evidence submitted by the self-petitioner following the remand. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The alien seeks classification 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 priest at the Wonhyosa Buddhist Temple in Rowland Heights, California[1]. The self-petitioner filed the Form I-360 petition on June 4, 2004. On August 7, 2008, the director, noting the negative results of a site visit to the petitioning organization, revoked the petition. The director determined that the self-petitioner's employer did not establish (1) that it was extending a qualifying job offer, (2) that the self-petitioner's employer had the ability to pay the self-petitioner, or (3) that the self-petitioner had the requisite two years of qualifying experience prior to the filing date of the petition.

On certification, the self-petitioner submitted a brief and further documentation.

Section 205 of the Act, 8 U.S.C. § 1155, states that the Secretary of the Department of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a

[1] The director's decision states that Wonhyosa Buddhist Temple is the petitioner and is the beneficiary. Mr. signed the Form I-360 petition and is therefore the self-petitioner.

> denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Id.*

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 is whether the self-petitioner's employer established that it was extending a qualifying job offer. This requirement is set forth in the prior regulation at 8 C.F.R. § 204.5(m)(4), which states that:

> *Job offer.* The letter from the authorized official of the religious organization in the United States must also state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration), or

> how the alien will be paid or remunerated if the alien will work in a professional religious capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support. In doubtful cases, additional evidence such as bank letters, recent audits, church membership figures, and/or the number of individuals currently receiving compensation may be requested.

In this case, the director found that the self-petitioner's employer did not extend a qualifying offer to the self-petitioner. She found that:

> In the Notice of Intent to Revoke, the petitioner was clearly advised that there is no evidence showing that the Wonhyosa Buddhist Temple "fully provides to Beneficiary his housing, food and other basic needs" according to counsel's claim on April 21, 2005. Moreover, a search of public record indicates that the beneficiary Jae Wan Park is the owner of a flower business, 4 Seasons Flower Shop. Due to the lack of evidence that the beneficiary has been compensated or supported by the petitioner, it is reasonable to suggest that the beneficiary must rely on the income of his flower shop in order to survive in the United States.
>
> With this response, the counsel did not provide any documentary evidence to show that the petitioner Wonhyosa Buddhist Temple has been supporting the beneficiary for his living needs. In addition, review of the petitioner's Statement of Activities for the year end December 31, 2007 does not show any fund was allocated for the beneficiary's housing and his living needs. Regarding the beneficiary's ownership of a flower shop, the counsel stated "In May of 2006, for a brief period, the Beneficiary provided plants and flowers to visitors of Petitioner's temple. Since the location of temple was remote and the visitor could not purchase flowers and plants to bring to the temple, the Beneficiary offered this service to the visitors. The flowers and plants, according to the Beneficiary, were sold and payments were received as donations to cover the cost of the plants and flowers." Again, the counsel's statement was submitted without any corroborative evidence.

As such, the petitioner has failed to show it has extended a valid job offer. In the appeal brief dated August 22, 2008, counsel stated:

> Enclosed, please find the Certificate of Appointment recently issued by the Secretary General of Won Hyo Denomination of the Korea Buddhist Organization. Also, please refer to the attached letter recently sent by the Chief Administrator of the Office of Director of Wonhyo Denomination of the Korea Buddhist Organization. These documents along with evidence submitted previously should confirm that the Beneficiary is currently in the U.S. on behalf of his denomination of the Korea Buddhist Organization to evangelize and minister to the Korean Buddhists residing in the U.S. Furthermore, as explained previously, the Beneficiary is a monk, and it has

> been long held that monks, along with nuns and religious brothers and sisters, live in an unsalaried environment. Finally, concerning the 4 Seasons Flower Shop, please refer to the explanation provided in attached statement from the Beneficiary regarding the issue.

The AAO is not persuaded by counsel's assertions. The AAO has reviewed the Certificate of Appointment submitted by the self-petitioner, as well as the letter from the Office of Director of the Won Hyo Denomination, and determined that these letters are insufficient to show a valid job offer. These documents are dated both August 18, 2008, over four years after the petition was initially filed. A self-petitioner must establish the elements for the approval of the petition at the time of filing. A petition may not be approved if the self-petitioner was not qualified at the priority date, but expects to become eligible at a subsequent time. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). Therefore, the AAO finds that these two documents are insufficient to show that the self-petitioner's employer extended a valid job offer to the self-petitioner. Further, in the self-petitioner's own statement to which counsel referred, the self-petitioner admits to having operated the flower shop. The self-petitioner stated:

> In Apple Valley, I operated a plant and gift (flower) store with a permission from the congregation, but I closed it down after only 6 months due to lack of business experience. I then turned in the license within a year. I had to suffer some loss.

This explanation is different from the explanation provided by counsel in the Notice of Intent to Revoke, who stated that the self-petitioner opened a flower business as a service to the visitors of the temple. Here, the self-petitioner states that he operated a plant and flower business in Apple Valley. He never states that the business was done as a supplement to the temple. The self-petitioner had to close the flower shop due to a "lack of business experience," and he "turned in the license within a year." This does not reflect a business that was started as a supplement to the temple, but rather as an independent operation that the self-petitioner realized that he was not equipped to handle. This statement corroborates the director's finding that the opening of a flower shop does not reflect a valid job offer, since the self-petitioner appears to have opened the shop as a means to support himself.

Finally, the AAO is not persuaded by counsel's argument that the self-petitioner is a monk, and that as such, he lives in an unsalaried environment. The regulation above requires the employer to show how the self-petitioner will be paid. If room and board was to be provided, the AAO expects the self-petitioner to provide proof of this non-salaried compensation as well. The self-petitioner has not provided evidence showing that he would be given non-salaried compensation on behalf of the temple, such as room and board. 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 evidence is insufficient to establish that the self-petitioner's claimed employer made a valid job offer to the self-petitioner. Therefore, the petition may not be approved.

The second issue is whether the self-petitioner's employer had the ability to pay the proffered wage to the self-petitioner. Regarding the organization's ability to pay the proffered wage, the regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The director found that the employer did not show the ability to pay the prospective wage, finding that:

> ...With this response [to the NOIR], the petitioner submitted the following: Wonhyosa Buddhist Temple's Financial Statement for fiscal year 2007 and a copy of Property Tax Bill for a house located at 23975 Mountain View Rd with the beneficiary's name Jae Wan Park listed as the owner of record.
>
> The financial statement does not include any expenses for the beneficiary's housing and his living expenses. The beneficiary's residential lease agreement shows his total monthly rent of $1,980 or $23,760 a year. This amount far exceeds the net income of $6,612 that the petitioner generates annually. The petitioner's balance sheet shows it has a current asset (cash) of $30,198 and land property land [sic] valued at $71,400. However, there is no documentary evidence, including bank statements, certificate of deposit... was submitted to show this $30,198 was a cash asset. Furthermore, the property located at 23975 Mountain View Rd does not belong to the petitioner Wonhyosa Buddhist Temple. It is privately owned by the beneficiary Jae Wan Park according to the submitted property Tax Bill. Therefore, the petitioner has failed to show its ability to pay the beneficiary.

On appeal, counsel states:

> Again, the Beneficiary is a monk and does not receive any wage from the petitioner. His livelihood is entirely supported by the petitioner, like other monks, nuns and religious brothers who live in an unsalaried environment. The financial statement submitted was for the year 2007, during that time, as shown by the lease agreement and the Petitioner's statement, the petitioner leased its premise at Apple Valley, CA and paid no rent. The landlord basically provided the usage of the premise without charge. The current rent of $1,980 began recently in 2008.

The AAO is not persuaded by counsel's statement. First, counsel explains that the temple's 2007 statement of finances did not include any proof of rent paid because the landlord provided the usage of the premises free of charge. This claimed gesture on the part of the self-petitioner's landlord is insufficient to show that the temple has the ability to provide the self-petitioner with "his housing, food, and other basic needs." Further, according to the regulation above, the self-petitioner's employer must demonstrate its ability to compensate him at the time the priority date is established and continuing until the self-petitioner obtains lawful permanent resident status. Counsel states that the current rent of $1,980 began recently in 2008. The self-petitioner has not provided evidence that the temple paid his rent in 2008 or any of the other years. The self-petitioner has provided no evidence that the temple provided him with room and board from the time the Form I-360 petition was initially filed until 2007 and after 2008.

The self-petitioner submitted few other financial documents in an attempt to show the temple's ability to provide him with his housing, food, and other basic needs. The record contains bank account statements from August of 2004 through January of 2005, but these documents are insufficient to show the ability to compensate the self-petitioner. Bank statements show the amount in an account on a given date, and cannot show the sustainable ability to pay a wage. The AAO finds that the evidence submitted is insufficient to show that the temple has the ability to provide the self-petitioner with housing, food, and other basic needs. For this additional reason, the petition may not be approved.

The third issue is whether the self-petitioner had the required two years of experience prior to filing the petition. The prior regulation at 8 C.F.R. § 204.5(m)(1) states:

> *Religious workers.* (1) An alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States. . . . All . . . religious workers must have been performing the vocation . . . or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

In response to an RFE, the self-petitioner, through counsel, submitted a brief documenting the self-petitioner's work history during the two-year period immediately preceding the filing of the petition. Counsel wrote:

> **Work History (June 4, 2002 to June 4, 2004):** During the relevant period of June 4, 2002 to June 4, 2004, the Beneficiary was employed as the chief priest for the petitioning organization, Wonhyosa Buddhist Temple, Inc. The petitioner is a Buddhist temple that promotes metaphysics and soteriology of the most influential

Korean Buddhist leader, "Wonhyo." The beneficiary, as the chief priest, has performed the following major duties:

- Lead religious service on a daily basis that involves prayers, chants and teachings of Buddhism to regular and visiting members of the temple.
- Visit members' homes to encourage and promote their Buddhist beliefs and provide study of Buddha teachings.
- Perform evangelism at places where Korean [sic] frequent such as Korean markets and restaurants and promote Buddhism, meditations, etc.
- Regularly conduct and teach two types of "bodhisattva" (Kwanum and Jijang) rituals to help believers attain enlightenment.

The Beneficiary is a Buddhist monk who has dedicated his life to promoting the Buddhist belief and teachings. His membership history was explained in the petitioner's letter as well as the Certificate of Priesthood. These documents were submitted previously. Original photos showing his ministry as a Buddhist priest is submitted.

The director found that the self-petitioner did not have the full two years of experience due to the location of the self-petitioner's employer. In the NOIR, the director cited the self-petitioner's statement above. She then stated:

The counsel's statement was not supported by any documentary evidence. The address at [redacted] is shown as a single family residence. The petitioner has not submitted any evidence to show that the location at [redacted] was authorized to perform religious activities. Furthermore, in response to the USCIS' request on April 21, 2005, the counsel stated that the petitioning entity has moved to a new location at [redacted] The lease agreement signed between the landlord and Wonhyosa Temple Inc. shows that the premises at [redacted] are for the sole use as a personal residence by [redacted] As such, the location was not authorized to hold any religious activities. Finally, during a telephonic interview with [redacted] the [redacted] Temple, USCIS official was informed that the current address for the temple is [redacted] On October 29, 2007, USCIS official conducted a site check which revealed that there were no religious activities being observed at this address.

As such, the Counsel's claim that the beneficiary has been performing those claimed duties "lead religious services, visit members, perform evangelism, conduct and teach bodhswatta" has raised great concern about this authenticity. Therefore, the evidence is insufficient to establish that he beneficiary has been performing full-time work in the same capacity as the proffered religious position for the two-year period immediately preceding the filing of the petition.

In response to the NOIR, counsel stated:

> The [temple] has recently moved its location to A copy of the lease agreement and photos of the new location is [sic] attached. Although the [temple] owns land to eventually build a permanent temple, for the last several years, the [temple] has been leasing private residences for its service. The [temple] has utilized the following locations for conducting its service:
>
> Jan. 2005 – Aug. 2007
> Aug. 2007 – Jun. 2008
> June. 2008 – Present:
>
> Lease agreements are submitted again. Photos of the Lucerne Valley premise were submitted previously. Photos of Apple Valley premise are not available since the [temple] used the premise for a brief period of time. Photos of Rowland Heights premise are attached.

The director denied the petition because the self-petitioner failed to show that any of its listed locations were authorized to hold any religious activities. The leases specify that the properties are to be used solely as a residence and may not be used for any other purpose. The director also found that there was no evidence showing that the self-petitioner has been performing any duties such as leading religious services, visiting members, performing evangelism, and regularly conducting and teaching classes. The director determined that the evidence was insufficient to establish that the self-petitioner had been performing full-time work as a Buddhist priest throughout the two-year period immediately preceding the filing date of the petition.

On appeal, counsel states:

> Documents verifying the Beneficiary's ministry in the U.S. were submitted previously and with this appeal. We also attach a roster of the [temple] members and recent visitors with summary translation showing that the total numbers of regular members and recent visitors is approximately 672. The Beneficiary has been activity ministering to these and other individuals and the USCIS conclusion that the [temple] appears to have only two members is completely false. We also attach various photos of the beneficiary that were taken during the Beneficiary's ministry in the U.S. The evidence taken as a whole should establish Beneficiary has been performing duties of a Priest in the U.S.

The AAO is not persuaded by counsel's assertions. The self-petitioner has to show that he worked for two years immediately preceding the filing date of the petition, i.e., from June 4, 2002 to June 4, 2004. The self-petitioner has not submitted any documents that directly link him to working full

time for the Wonhyosa Buddhist Temple during this period. The self-petitioner stated that the temple provided compensation for his daily living expenses through donations. He provided no proof, however, of a stipend or payments of any kind. He provided no evidence of room and board, or that the temple had been supporting him during this period. He also did not provide a contemporaneous letter from his temple affirming that he worked there full-time during the two years prior to the filing of the petition. The evidence that the self-petitioner submitted, such as photographs and the temple's bank statements for six months, does not directly establish that the self-petitioner worked for the temple for the two years immediately preceding the filing date of the petition. Further, the bank statements are from a period after the two-year period, from August, 2004 through January, 2005. The self-petitioner has not met his burden of showing that he worked full-time as a Buddhist priest throughout the two years prior to the filing date of the petition.

The director also found that the site visits by an immigration officer did not support the self-petitioner's claims about his work at the temple:

> On October 18, 2007, USCIS conducted a site visit at the [temple]'s location The address was a house located on a dirt road, the house number was on a fence post. It does not appear that any temple exists at this address. As mentioned above, upon telephonic interview with the president of the Temple, Jo claimed that the current address for the temple is
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> On October 29, 2007, the USCIS conducted another site check at It appears to be a double wide trailer (on a permanent foundation, with a build on addition), this house is on a very large lot (2.5 to 5 acres), about 2 miles off the paved road and about 4 to 5 miles off the main road. The area around the house was fenced in, with three large dogs inside the fence. The dogs were barking very loud and the officer also honked his horn but no one came out. The place was not well kept. The officer was on the property for approximately 35 to 40 minutes with no one entering or exiting the property. There is no Buddhist Temple at this address; no one can enter the fenced area because of the dogs. It appears that a family is living at his address. Finally, a search of the California Business Portal indicates that the status of Wonhyosa Buddhist Temple Inc. has been suspended.

In response to the notice of intent to revoke and on appeal, the self-petitioner through counsel submitted a rebuttal to the adverse site visit. Counsel submitted pictures of the Apple Valley premises and argued in his July 30, 2008 brief that "the premise has Buddhist statutes, paper lanterns, and other items to show that the premise is a Buddhist religious ground." In the same brief, counsel also stated that the California Business Portal site shows that the petitioner's status was "active" and stated that the self-petitioner's employer was "temporarily suspended for not filing its annual Statement of Information."

Regarding the adverse site visit, counsel stated on appeal:

> Please see attached statement by the Beneficiary and the statement by Mr. the petitioner's evangelist regarding this issue. We also attach a sample of Petitioner's listing and advertising in Modern Buddhism magazine in the years 2005 and 2006. The advertisement and listing clearly list the Petitioner name, Lucerne Valley location information, along with notice of main service on 11 am the first Sunday of every month. Finally, we attach the petitioner's 2008 calendar, prepared in 2007, which list the petitioner's Apple Valley location information on the calendar. Taken as a whole, along with evidence submitted previously, the Petitioner clearly announces to the public that it holds religious service at its location.

The AAO is not persuaded by counsel's arguments. The California Business Portal currently indicates that the temple's corporate status is currently suspended.[2] The fact that the temple's status is "suspended" shows that the temple is not in business according to the state of California. The AAO will uphold the director's finding that the self-petitioner failed to establish the temple's legitimate operation and validity of the self-petitioner's claimed proffered position. The concealment of the corporate status of the organization by the self-petitioner seriously compromises the credibility of the remaining evidence in the record. *See Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988)(stating that doubt cast on any aspect of the self-petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.) It is incumbent upon the self-petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *See id.*

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The self-petitioner has not sustained that burden. Accordingly, the director's decision to deny the petition will be affirmed.

ORDER: The director's decision is affirmed.

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[2] See http://kepler.sos.ca.gov/cbs.aspx, accessed on June 28, 2012 and incorporated in the record of proceeding.