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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**

[Redacted]

C1

Date: **JUN 04 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 with the field office or service center that originally decided your case by filing a 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,

[Signature]
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 a head abbot monk. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits a brief from counsel, a copy of the R-1 visa page from the beneficiary's passport, copies of previously submitted letters from the petitioning temple and [REDACTED] Buddhist Temple, affidavits of individuals [REDACTED] and [REDACTED], and copies of certificates related to [REDACTED] with translations. The petitioner also submits documents related to the organization and governance of the petitioning temple and [REDACTED] Buddhist Temple and the [REDACTED] Order in the United States of America (U.S.A.). These documents include lists of officers and directors, documents filed with the Texas Office of the Secretary of State, certificates of membership in the [REDACTED] Order in the U.S.A., bylaws for the [REDACTED] in the U.S.A. and a printout from that organization's website, a photograph, and an untranslated brochure for the petitioning temple.

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 U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the alien 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 December 30, 2010. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work in lawful 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.

The issue in this case is whether the beneficiary engaged in unauthorized employment during the two-year qualifying period, thereby failing to maintain lawful status and failing to meet the requirements of 8 C.F.R. §§ 204.5(m)(4) and (11).

According to the evidence submitted with the Form I-360 petition, the beneficiary began working in the United States in May 2007 for [REDACTED]. The beneficiary held R-1

nonimmigrant status which authorized his employment with that organization which is also known as [REDACTED]. The petitioner submitted a letter from [REDACTED] confirming that the beneficiary worked as a full time monk for that organization from May, 2007, until June, 2009, in the position of vice-abbot. A letter from the petitioner, also submitted with the petition, stated that in June, 2009, the beneficiary was offered the position of head abbot for the petitioning temple. The petitioner stated that this decision was "approved by the Board of Director of the [REDACTED] in The U.S.A." The petitioner additionally submitted a copy of a certificate entitled [REDACTED] signed by the president of the [REDACTED] in the U.S.A., announcing the beneficiary's appointment to the position of abbot at the petitioning temple on June 14, 2009. The record does not indicate that the beneficiary held authorization to work for the petitioner during the two year qualifying period immediately preceding the filing of the petition.

On April 25, 2011, the director denied the petition, finding that the beneficiary engaged in unauthorized employment with the petitioning temple. The director therefore determined that the petitioner failed to establish that the beneficiary was lawfully employed as a religious worker for at least the two years immediately preceding the filing of the petition.

On appeal, counsel for the petitioner argues that the beneficiary's work for the petitioner should not be considered unauthorized employment because of "[REDACTED] and [REDACTED] [REDACTED]'s connections, affiliations, and associations with [REDACTED] and The [REDACTED] in the United States of America." In his brief, counsel asserts that the signatory of the petition, [REDACTED], "has been and currently is" the president and chairman of both the petitioning temple and the beneficiary's former employer, [REDACTED]. Counsel states that, on June 12, 2009, both temples became members of the [REDACTED] in the U.S.A. He argues:

Upon membership to the [REDACTED] the organization became the governing authority for both Buddhist temples, [REDACTED] and the Petitioner [REDACTED]. Technically speaking, [REDACTED] at that point became the effective employer/main authority of both temples. Since [REDACTED] was employed by [REDACTED] previously, after June of 2009, the [REDACTED] became the employer of [REDACTED] acting within his executive position capacity of the [REDACTED] and as presidents of both Buddhist temples, directed [REDACTED] to work at Petitioner [REDACTED] as a "trial period." (See Exhibit I – Affidavit of [REDACTED]. Since [REDACTED] was acting within his authority within the [REDACTED] and the [REDACTED] was the governing authority for both Buddhist temples, any work experience gained by [REDACTED] should be considered authorized and legal.

The petitioner submits documentary evidence to establish [REDACTED]'s connection to both temples and the temples' shared governance by the [REDACTED]. An affidavit from [REDACTED] vice-chairman of the petitioning temple, asserts that the financial records of the petitioning temple

are reported to [REDACTED] and [REDACTED] and that all of the petitioner's major business affairs must be approved by [REDACTED]. In a separate affidavit, [REDACTED] asserts that, although the petitioner "has its own board members, its growth and major decision are still under the guidance of [REDACTED]. The affidavit also states that the beneficiary has continuously reported to [REDACTED] during his employment for both [REDACTED] and the petitioning temple.

The regulations at 8 C.F.R. §§ 214.2(r)(3)(ii)(E)(2007), as were in effect when the beneficiary was approved as an R-1 nonimmigrant, required an authorized official of the organization to provide the "name and location of the **specific organizational unit** of the religious organization" for which the alien would work (emphasis added). The regulation at 8 C.F.R. § 214.2(r)(6) stated:

Change of employers. A different or additional organizational unit of the religious denomination seeking to employ or engage the services of a religious worker admitted under this section shall file Form I-129 with the appropriate fee ... Any unauthorized change to a new religious organizational unit will constitute a failure to maintain status..."

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 only authorized his employment with the named employer, [REDACTED] of San Antonio, Texas. Regardless of the shared governance of [REDACTED] and the petitioner by [REDACTED] and the [REDACTED] the beneficiary was not authorized to engage in employment with any affiliated organization without first obtaining authorization through a separate Form I-129 petition. By working for the petitioner, the beneficiary engaged in unauthorized employment, thereby failing to maintain lawful status.

Because the petitioner has not established that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition, 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.