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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

Date: JUN 20 2012 Office: CALIFORNIA SERVICE CENTER

FILE: [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:

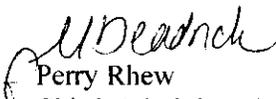


INSTRUCTIONS:

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 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,


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 Theravada Buddhist 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 letter from [REDACTED]

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 United States Citizenship and Immigration Service's (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 petitioner filed the petition on October 18, 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 regulation at 8 C.F.R. § 204.5(m)(4) also sets forth the requirements for an acceptable break in the continuity of an alien's religious work as follows:

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...

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.

According to the Form I-360 petition and accompanying evidence, the beneficiary entered the United States on January 15, 2010 in R-1 nonimmigrant status which authorized his employment with the petitioner until October 31, 2012. The petitioner did not indicate on the petition or in supporting materials whether it currently employed the beneficiary. The petitioner submitted an undated resume for the beneficiary which included the following work history:

3rd Nov. 2005 to Now

**Buddhist Monk (Religious Minister)
Sanchiviharaya Temple...**

2nd Nov. 2003 to 2nd Nov. 2005

Buddhist Monk (Religious Minister)

7th April 2002 to 1st Nov., 2003

Buddhist Monk (Religious Minister)

The petitioner also submitted a letter from [REDACTED] dated July 19, 2009, which stated that the beneficiary "has been continuously serving the Sangha (Order of Buddhist monks) as a minister" since his ordination on April 6, 2002. The letter suggested that the beneficiary was currently working and residing at [REDACTED] but did not provide dates of employment. Additionally, the petitioner submitted a letter from [REDACTED] in Cambodia which described the beneficiary's service as a monk for that temple but did not state dates of employment.

On April 21, 2011, USCIS issued a Request for Evidence in part requesting evidence that the beneficiary worked continuously in a qualifying position for at least the two-year period immediately preceding the filing of the petition. The notice specifically instructed the petitioner to submit experience letters written by the beneficiary's previous and current employers that include "the employer's name, specific dates of employment, specific job duties, number of hours worked per week, form and amount of compensation, and level of responsibility/supervision." The notice also stated that "[e]ach experience letter must be written by an authorized official from the specific location at which the experience was gained." The petitioner was additionally instructed to submit evidence of compensation received by the beneficiary or evidence of self-support, as well as an explanation for any break in the continuity of the work during the qualifying period.

In response to the notice, the petitioner submitted a document describing the beneficiary's work history and duties as a monk, signed by both the beneficiary and [REDACTED] chief incumbent of the petitioning temple. The document listed the following as the beneficiary's "Work History:"

April 07, 2002-November 01, 2003

[REDACTED]

November 02, 2003-November 02, 2005

November 03, 2005-November 20, 2009

The document did not provide the beneficiary's dates of employment with the petitioner, if any.

The director denied the petition on June 14, 2011, finding the evidence insufficient to establish that the beneficiary has been employed in a qualifying position continuously for at least the two-year period immediately preceding the filing of the petition.

On appeal, the petitioner submits a letter from [REDACTED] attesting to the beneficiary's service as a monk at [REDACTED] Monastery in [REDACTED] "from November 03, 2005 to November 10, 2009," and describing his duties. On the I-290B Notice of Appeal, counsel for the petitioner states the following:

Attached is the letter of experience for the two year period immediately preceding the filing of this application. The experience letter is written by the former head monk who supervised the beneficiary, [REDACTED] served at the [REDACTED] from November 2005 until November 2009 and did not not [sic] work in the U.S. prior to that time. Due to unreliable mail service, in the part of the world where the signer of the experience letter is located, Petitioner was unable to get the letter in time and it had to be resent a second time.

As stated above, the petition was filed on October 18, 2010, so the qualifying period in this case consists of the two years immediately preceding that date. Therefore, although counsel states that the letter submitted on appeal is "for the two year period immediately preceding the filing," the letter only describes the beneficiary's experience for a portion of the qualifying period.

The petitioner has not submitted evidence to account for the beneficiary's activities between the end of his employment at [REDACTED] on November 10, 2009, and his arrival in the United States on January 15, 2010. Therefore, the petitioner has not established the continuity of the beneficiary's qualifying work during that time, nor has the petitioner established that this gap qualifies as an acceptable break in the continuity of the beneficiary's work under 8 C.F.R. § 204.5(m)(4). Further, the petitioner has not indicated the dates of its own employment of the beneficiary to establish the continuity of his qualifying religious work after his arrival in the United States.

The AAO agrees with the director's determination that the petitioner has not established that the beneficiary has the requisite two years of continuous, qualifying work experience immediately preceding the filing of 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.