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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
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Services

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Office: CALIFORNIA SERVICE CENTER



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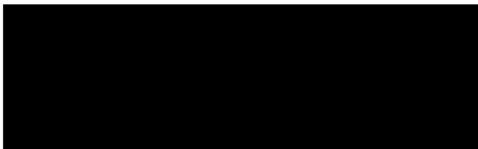
Petitioner:

Beneficiary:



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 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
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 Sikh 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 priest. 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.

The petitioner submits no additional evidence on appeal. Although counsel indicated on the Form I-290B Notice of Appeal that a brief and/or additional evidence would be submitted within 30 days, nothing further has been received to date, so the AAO will consider the record complete as it now stands.

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 August 9, 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 Form I-360 petition, the beneficiary entered the United States on August 14, 2008 in R-1 nonimmigrant status, expiring August 14, 2011. A letter from the petitioner, submitted with the petition, stated that the petitioner "has employed [REDACTED] as full time religious priest on R-1 status since 1988." Accompanying the petition, the petitioner also submitted a copy of the R-1 visa page from the beneficiary's passport, which indicated that the beneficiary was authorized to work for [REDACTED]

On January 4, 2011, USCIS issued a Notice of Intent to Deny based, in part, on a failed compliance review for a previously filed petition associated with the petitioner and a different beneficiary. The notice requested additional evidence from the petitioner, including evidence regarding the petitioner's religious participation and employment history. The notice also instructed the petitioner to submit Internal Revenue Service (IRS) and Social Security Administration (SSA) records as evidence of the beneficiary's compensation during 2007, 2008 and 2009.

In a document entitled "Religious Participation History," submitted in response to the notice, the petitioner indicated that the beneficiary was employed as a priest at [REDACTED] New York from October, 2007 to March, 2009 and then as a priest for the petitioner from April, 2009 to the present. The petitioner also submitted a letter from [REDACTED] dated August 12, 2008, inviting the beneficiary to "teach sikh religious teachings" to its congregation, and stating that it would provide him with "free boarding and lodging." The IRS records submitted by the petitioner indicate that beneficiary earned \$12,000 from the petitioner in 2010 and \$4,500 from the petitioner in 2009. No records were submitted for 2008.

In the decision dated February 16, 2011, the director found that the petitioner had not established that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience. The director stated, in part:

A review of the religious participation history of the beneficiary indicates that the beneficiary was first admitted as an R-1 nonimmigrant worker on October 18, 2007 to work as a priest for [REDACTED] located at [REDACTED] New York. The beneficiary was employed from October 18, 2007 to March 2009 with the above petitioner. The current petitioner, The [REDACTED] states that the beneficiary has been employed with them since April, 2009. However, during that time he only authorized to work with the [REDACTED]. Therefore, he did not have USCIS authorization to work from April 2009 to the present with the current petitioner.

On appeal, the petitioner does not assert that the beneficiary held authorization to work for the petitioning organization during the qualifying period. Instead, counsel argues that "the beneficiary had a legal and valid R-1 visa to work in a priest capacity which had not expired when the beneficiary came to work for the petitioner's place of business."

The regulations at 8 C.F.R. §§ 214.2(r)(3)(ii)(E), as were in effect in 2008 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. 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, pursuant to 8 C.F.R. § 214.1(e), a nonimmigrant may engage only in such employment as has been authorized. Any unlawful employment by a nonimmigrant constitutes a failure to maintain status.

The AAO disagrees with the director's statements that the petitioner has established the beneficiary's authorization to work for [REDACTED]. The only evidence submitted by the petitioner regarding the beneficiary's R-1 status indicates that he was authorized to work for [REDACTED]. However, the AAO agrees with the director's finding that the beneficiary engaged in unauthorized employment during the qualifying period, thereby failing to maintain his lawful status and failing to meet the eligibility requirements of 8 C.F.R. § 204.5(m)(4) and (11).

The AAO further notes that the petitioner has not submitted sufficient evidence regarding the beneficiary's employment with [REDACTED]. Therefore, the petitioner has not demonstrated the continuity of the beneficiary's religious employment during the qualifying period. The petitioner asserts that the beneficiary was employed by [REDACTED] Lobana as a priest from October, 2007 to March, 2009. However, the submitted letter from [REDACTED] does not set forth any dates of employment and the petitioner has not submitted any evidence of the beneficiary's salaried or non-salaried compensation during that purported employment as required under 8 C.F.R. § 204.5(m)(11). 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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.