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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]

Date: **APR 09 2013**

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 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,

Ron Rosenberg
Acting 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 religious organization. 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 spiritual priestess. 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 letter from the petitioner, and copies of documents already in the record.

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 February 21, 2012. 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 arrived in the United States on January 22, 2010 in B-2 nonimmigrant visitor status. The regulation at 8 C.F.R. § 214.1(e) states that aliens in such status “may not engage in any employment.” The evidence indicates that the beneficiary was subsequently granted R-1 nonimmigrant status authorizing her employment with the petitioner from May 6, 2011 to November 5, 2013.

In a letter accompanying the petition, the petitioner described the beneficiary’s work history as follows:

[REDACTED] has been a meditation teacher for [REDACTED] for over five (5) years, serving at the [REDACTED] center in Mumbai, Maharashtra, India. Since May 2011, she has been working in the [REDACTED] San Francisco center as a Meditation Teacher on valid R-1 status.

The petitioner submitted a letter from the affiliated international headquarters, [REDACTED] in Rajasthan, India, which stated that the beneficiary has been a spiritual teacher for the organization for the past seven years, having “resided at one of our [REDACTED] in Dahisar (Maharashtra, India) for five years,” and having worked for the petitioner since May 2011. A letter from the petitioner’s attorney also indicated that the beneficiary served at a [REDACTED] in India for five years and has worked for the petitioner since May 2011.

On July 16, 2012, USCIS issued a Request for Evidence (RFE), in part requesting additional evidence regarding the beneficiary’s work history during the two-year qualifying period immediately preceding the filing of the petition. The notice instructed the petitioner to submit experience letters from current and former employers including specific dates of employment, a weekly breakdown of duties, and level of responsibility/supervision. The notice also requested evidence of salaried or non-salaried compensation for the beneficiary’s work abroad prior to receiving work authorization in the United States, as well as evidence of compensation received for the beneficiary’s work in the United States after being granted R-1 status on May 6, 2011.

In a letter responding to the notice, counsel for the petitioner noted that the regulation at 8 C.F.R. § 204.5(m)(4) allows for a break in the continuity of an alien’s religious work, and additionally stated the following:

In this case, Beneficiary has been a Meditation Teacher for [REDACTED] for at least two years continuously as she working at [REDACTED] in Mumbai, India since 2006. [REDACTED] began training as Meditation Teacher in 2005 and was ordained in 2006. **See Exhibit 5.** From 2006-2010, [REDACTED] worked in the Mumbai Maharashtra, India [REDACTED] under [REDACTED]. **See Exhibit 1.** [REDACTED] entered the U.S. in February 2010 while she was on a short sabbatical, where she stayed at the San Francisco [REDACTED]. While on sabbatical, San Francisco [REDACTED] filed R-1 petition on

█ behalf, which was approved May 2010. Beginning, May 2010 █ performed continuous religious duties under the supervision of █, Vice President of █ in San Francisco, CA. **See Exhibit A: Petitioner Support Letter.** As discussed above, the █ is one organization that serves people of all races and cultural backgrounds through more than 7000 branches in more than 90 countries and territories.

An August 11, 2012 letter from the petitioner stated the following:

In February 2010, she entered the United States on a valid visitor visa while she was on a short sabbatical. While on sabbatical, she stayed at our San Francisco branch, but was not working. █ has a reputation as an exceptionally satisfactory █ Teacher. As such, our San Francisco branch later filed R-1 religious worker application which was approved on May 6, 2010. It was only at that time that █ began working on a temporary, full-time basis. Thus, █ short sabbatical did not involve unauthorized work in the U.S.

With regard to the beneficiary's compensation for her work in the United States, the petitioner asserted that it "has been fully supporting her expenses," and that the beneficiary "has been provided accommodation in San Francisco center." The petitioner submitted copies of its bank statements for the months of May through July 2012 "as a proof that the organization is capable of covering the above expenses for █" The petitioner also asserted that it was "attaching grand [sic] deed documents from the City and County of San Francisco and County of Marin showing that the █ is a registered owner for these two meditation center properties in San Francisco Bay Area." The petitioner submitted two deed documents, one of which referenced "real property in the City of Novato, County of Marin, State of California," but neither of which identified the exact address or location of the property being conveyed. The petitioner did not submit documentary evidence in support of its assertion that the beneficiary had resided at its San Francisco center during any part of the qualifying period. 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)).

Regarding the beneficiary's employment abroad, the petitioner submitted a letter from █ Sister-in-Charge of █ in Dahisar, Mumbai, India. In the letter, █ asserted that the beneficiary "served in our branch of █ from 2006-2010 at the capacity of █ Teacher," and provided a brief description of the beneficiary's duties in that role. The letter did not indicate whether the beneficiary received any salaried or non-salaried compensation, nor was any documentary evidence submitted regarding compensation for work abroad.

On October 4, 2012, the director denied the petition, finding that the petitioner had not established that the beneficiary has the requisite two years of lawful, qualifying work experience immediately preceding the filing of the petition. The director noted that, in response to the RFE, the petitioner stated that the beneficiary began working for the petitioning organization on May 6, 2010. As the beneficiary was not granted R-1 status until May 6, 2011, the director found that any work performed prior to that date was in violation of her immigration status and therefore not qualifying.

On appeal, counsel and the petitioner both assert that the beneficiary in fact began working for the petitioner on May 6, 2011, and that the petitioner's letter responding to the RFE contained "a typographical error" listing the date as May 6, 2010. In his brief, counsel again argues that the time spent by the beneficiary in the United States prior to being granted R-1 status qualifies as an acceptable break under 8 C.F.R. § 204.5(m)(4), and that the beneficiary previously worked continuously as a meditation teacher in India since 2006. In a letter submitted on appeal, the petitioner states:

[REDACTED] was on a short sabbatical break from February 2010-May 2011, but she was still employed by [REDACTED] and has been since 2006; the break did not exceed two years; the nature of the break was a short sabbatical that did not involve unauthorized work in the U.S.; and [REDACTED] was a member of [REDACTED] throughout the two year of qualifying employment.

The AAO notes that letters submitted at the time of filing from counsel, the petitioner, and the international headquarters organization all stated that the beneficiary began working for the petitioner in May 2011. Accordingly, the AAO finds the petitioner's explanation credible that the date of May 6, 2010 as stated in response to the RFE was an inadvertent error. However, the AAO agrees with the director's ultimate finding that the petitioner's evidence fails to establish that the beneficiary has the requisite two years of qualifying work experience under the regulations.

To the extent the director found that the petitioner submitted sufficient evidence to demonstrate its prior compensation of the beneficiary as required under 8 C.F.R. § 204.5(m)(11), the AAO disagrees. The petitioner asserted in response to the RFE that it provided non-salaried compensation to the beneficiary in the form of accommodation and that it "covered" her living expenses. However, while the petitioner has submitted some evidence relating to its "ability" to provide the asserted compensation, it has submitted no documentary evidence in support of the assertion that such evidence was in fact provided. 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

Further, the regulation at 8 C.F.R. § 204.5(m)(11) requires the petitioner to submit evidence regarding the beneficiary's qualifying employment "during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work." (Emphasis added). The required evidence includes evidence of salaried or non-salaried compensation or qualifying self-support. The petitioner states that the beneficiary has been continuously employed

by [REDACTED] since 2006. The petitioner asserts that the beneficiary was on sabbatical from the time of her arrival in the United States on January 22, 2010 until she was granted R-1 status on May 6, 2011, and that she previously worked as a meditation teacher in Mumbai, India. A letter from the international headquarters which accompanied the petition stated that the beneficiary has been a spiritual teacher with the organization throughout the period in question, and a letter from [REDACTED] in Dahisar, Mumbai, India asserted that the beneficiary served at that location from 2006 to 2010. However, the petitioner has not submitted any evidence of the beneficiary's compensation abroad during the period preceding the purported sabbatical period. Nor has the petitioner submitted evidence of the beneficiary's compensation during the sabbatical period itself to establish that she "was still employed as a religious worker" as required under 8 C.F.R. § 204.5(m)(4)(i).

For the reasons discussed above, the AAO finds that the petitioner failed to establish that the beneficiary has the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition.

As an additional matter, the AAO finds that the petitioner has not established the beneficiary will be working for a bona fide non-profit religious organization in the United States. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *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 Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The USCIS regulation at 8 C.F.R. § 204.5(m)(3) provides that in order to be eligible for classification as a special immigrant religious worker, an alien must be coming to work for a bona fide non-profit religious organization in the United States, or a bona fide organization which is affiliated with the religious denomination in the United States. The regulation at 8 C.F.R. § 204.5(m)(5) states, in pertinent part:

(5) Definitions. As used in paragraph (m) of this section, the term:

Bona fide non-profit religious organization in the United States means a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the IRS confirming such exemption.

Bona fide organization which is affiliated with the religious denomination means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code and possessing a currently valid determination letter from

the IRS confirming such exemption.

The regulation at 8 C.F.R. § 204.5(m)(8) states:

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 Internal Revenue Service (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 Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, 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.

On the petition, the petitioner listed its address as [REDACTED] in San Francisco, California and indicated that this would also be the address where the beneficiary will be working. In its letter accompanying the petition, the petitioner described itself as a non-profit organization headquartered in Great Neck, New York with over 25 centers in the United States. The petitioner also stated:

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Our San Francisco Center will be responsible for lodging and boarding needs and compensate her services monthly as follows, which may be subject to change:

· Room (may require sharing)	\$500
· Food	\$200
· Office Supplies	\$200
· Utilities	\$100
· Transportation	\$200
· Out of Pocket Expenses	\$200

The petitioner submitted copies of bank statements addressed to [REDACTED] in San Francisco, California in support of the organization's ability to provide the proffered compensation.

At the time of filing the petition, the petitioner submitted a June 5, 2001 letter from the Internal Revenue Service (IRS) to the [REDACTED] in Great Neck, New York, confirming that the organization is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code. In response to the July 16, 2012 RFE, the petitioner submitted a May 25, 2010 letter from the IRS to the [REDACTED] in Great Neck, New York, confirming the organization's exemption.

Both of the IRS letters submitted were addressed to the [REDACTED] in Great Neck, New York, which the petitioner has indicated is the [REDACTED] United States headquarters. However, neither of the letters indicates that that organization applied for or was granted a group exemption which would apply to subordinate organizations. The evidence indicates that it is the San Francisco center which will be employing and compensating the beneficiary, not the headquarters of [REDACTED]. As the petitioner has not established that the San Francisco center possesses a currently valid determination letter from the IRS or is covered by a group exemption letter, the petitioner failed to establish that the beneficiary will be working for a bona fide non-profit organization.

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.