



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JAN 30 2013** Office: CALIFORNIA SERVICE CENTER

FILE:

IN RE: 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:

SELF-REPRESENTED

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.

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 reject the appeal or, in the alternative, 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 Buddhism preacher. 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 U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) states that, for purposes of appeals, certifications, and reopening or reconsideration, "affected party" (in addition to USCIS) means the person or entity with legal standing in a proceeding. The USCIS regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(1) states that an appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, USCIS will not refund any filing fee it has accepted.

Here, the party that filed the appeal was [REDACTED] an attorney who claims to represent the petitioner. Accompanying the Form I-290B, Notice of Appeal, [REDACTED] submitted a copy of a Form G-28, Notice of Entry of Appearance as Attorney or Representative, dated July 12, 2010, which authorized her representation of the petitioner regarding the Form I-360 petition. However, the regulation at 8 C.F.R. § 292.4(a) requires that a new Form G-28 must be submitted on appeal to the AAO "to authorize representation in order for the appearance to be recognized by DHS." Similar instructions are listed on the Forms I-290B and G-28.

On December 18, 2012, the AAO faxed a letter to [REDACTED] which informed her of the regulation and stated:

You signed the Form I-290B as the petitioner's attorney. The record, however, does not contain a **new** and properly executed Form G-28, Notice of Entry of Appearance as Attorney or Representative, signed by both you and the petitioner:

In accordance with the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 292.4(a) as well as the instructions to the Form I-290B, a "new [Form G-28] must be filed with an appeal filed with the Administrative Appeals Office." This regulation applies to all appeals filed on or after March 4, 2010. *See* 75 Fed. Reg. 5225 (Feb. 2, 2010).

Without a new, fully executed Form G-28 authorizing you to represent the petitioner, the AAO cannot consider the appeal to have been properly filed. As required by 8 C.F.R. § 103.3(a)(2)(v)(A)(2) and its subclauses, you must submit a duly executed Form G-28 signed by you and the petitioner within **fifteen (15) calendar days** of the date of this notice. Failure to submit this required document will result in the rejection of the appeal as improperly filed, under the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(1). (Emphasis in original).

To date, no communication has been received and the record is considered complete as it now stands. Pursuant to 8 C.F.R. § 292.4(a), the AAO cannot recognize [REDACTED] as authorized to represent the petitioner on appeal. The party that filed the appeal is not an affected party with legal standing in the proceeding. Therefore, the AAO must reject the appeal as improperly filed.

Even if properly filed, the AAO would dismiss the appeal.

On appeal, [REDACTED] submits a brief, a letter from [REDACTED] [REDACTED] photographs, website printouts regarding tax liabilities and allowances in Hong Kong, 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 July 20, 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 supporting evidence, the beneficiary arrived in the United States on February 25, 2010 in B-2 nonimmigrant visitor status expiring on August 24, 2010. The regulation at 8 C.F.R. § 214.1(e) states that aliens in such status "may not engage in any

employment.” The record does not indicate that the beneficiary held any status that would have authorized her to engage in employment in the United States during the qualifying two-year period.

Accompanying the petition, the petitioner submitted a letter from [REDACTED]. The letter stated that, since her ordination as a Buddhism Preacher on February 25, 2008, the beneficiary “has continuously ministered in the [REDACTED] and its affiliated Buddhism Temples in both Hong Kong and overseas.” The petitioner also submitted a copy of the beneficiary’s certificate of ordination from [REDACTED].

On September 28, 2011, USCIS issued a Request for Evidence, in part requesting additional evidence regarding the beneficiary’s work history during the two years immediately preceding the filing of the petition. The notice instructed the petitioner to submit an experience verification letter from the [REDACTED] including a weekly breakdown of duties, “dates of duty assignment, number of hours worked per week, form and amount of compensation, and level of responsibility/supervision.” The notice also instructed the petitioner to submit documentary evidence that the beneficiary received salaried and/or non-salaried compensation during the qualifying period including Internal Revenue Service (IRS) tax records or comparable foreign documentation. The notice additionally stated:

For non-salaried compensation, please submit:

- Evidence showing the beneficiary’s residence and work location from July 20, 2008 until the filing date.
- Evidence that the past employer has provided and paid compensation for the beneficiary, including housing, meals, medical, dental, clothing expenses, insurance/travel expenses, retirement/pension contribution, and other incidental expenses.

Additionally, the notice instructed the petitioner to submit an explanation and supporting evidence for any breaks in the continuity of the beneficiary’s work during the qualifying period.

In a letter responding to the notice, counsel for the petitioner asserted that there was no gap in the beneficiary’s employment during the qualifying period as she was continuously serving the [REDACTED] and “her travel arrangement was part of her preaching duties” for that organization. Counsel additionally stated the following:

Please be advised that since the beneficiary was under the employment of [REDACTED] from February 2008 to July 2010, and was compensated in the form of allowances for free boarding, food and travel. There is tax filing requirement in Hong Kong. Since filing of I-360 petition in July 2011 [sic], beneficiary was in the

U.S. while waiting for the CIS approved working permit, and did not receive any compensation thereby, no tax return was filed.

The petitioner submitted a letter from the [REDACTED] stating that the beneficiary "has been continuously employed" by that organization since February 25, 2008 and providing additional details about her duties. The letter stated that, throughout her employment, "[t]he Monastery covered the board, food, clothes and transportation expenses, which is equivalent to about \$500 per month in the form of allowance." No documentary evidence was submitted in support of the asserted non-salaried compensation. 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)).

On March 28, 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 the beneficiary spent significant periods of time in the United States as a visitor during the qualifying period, and found that the petitioner had not established that the beneficiary was continuously employed by the temple in Hong Kong throughout that time. Additionally, the director found that the petitioner had not submitted verifiable evidence of the beneficiary's compensation during the qualifying period.

On appeal, counsel again asserts that the beneficiary was continuously employed by the [REDACTED] and that her travels to the United States were not visits for pleasure, but were part of her assigned preaching duties for her employer. Counsel submits a letter from the [REDACTED] which describes the "purposes and functions" of each of the beneficiary's trips to the United States during the qualifying period. The letter further stated:

It is noted that [REDACTED] visits to the U.S. under assignment by the Hong Kong temple did not involve selling of goods or solicitation and acceptance of donations. She did not receive any salary/remuneration from the U.S. organization, except boarding and food expenses that were provided for by our U.S. temple. All her travel expenses were paid for by the Hong Kong Temple...

The letter states that it is the temple's policy not to provide any cash compensation to its workers, "only the allowance in the form of free board, food, cloth and travel," and that the temple "did not maintain individual expense account recording the actual expenses" of the beneficiary. The letter also indicates that no tax return was filed for the beneficiary, as it was not required under Hong Kong tax regulations. Counsel submits printouts from the website of the Hong Kong Inland Revenue Department regarding tax liabilities and allowances.

The regulation at 8 C.F.R. § 204.5(m)(11) requires verifiable evidence of compensation for any work performed abroad during the qualifying period. The petitioner and the [REDACTED] assert that the beneficiary was employed by the latter

organization throughout the qualifying period and received non-salaried compensation equivalent to \$500 per month. Counsel has submitted an explanation and evidence on appeal regarding the lack of tax documentation for the beneficiary's compensation from the Hong Kong Inland Revenue Department. However, the petitioner has not submitted any verifiable documentary evidence beyond the assertions of the [REDACTED] regarding the beneficiary's purported compensated employment. 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). Accordingly, the AAO agrees with the director's finding that the petitioner failed to submit sufficient evidence of prior compensation as required under 8 C.F.R. § 204.5(m)(11).

In support of the claim that the beneficiary was continuously employed by the [REDACTED] during her time in the United States, that organization asserts on appeal that it paid the beneficiary's travel expenses as compensation for employment during her trips. However, the petitioner submits no documentary evidence to demonstrate this purported compensation. *Id.* The AAO therefore agrees with the director that the petitioner has not established the continuity of the beneficiary's employment for the [REDACTED] during her stays in the United States.

Finally, according to the letter on appeal from the [REDACTED] the beneficiary's housing and food expenses were provided by the petitioning organization during her time in the United States. The Board of Immigration Appeals has ruled that an alien who "receives compensation in return for his efforts on behalf of the Church" is "employed" for immigration purposes, even if that compensation takes the form of material support rather than a cash wage. *See Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982). To the extent that the beneficiary's room and board were provided in exchange for her service at the petitioning temple, this arrangement constituted unauthorized employment in violation of the beneficiary's non-immigrant visitor status.

For the reasons discussed above, the AAO agrees with the director's finding that the petitioner has not established that the beneficiary has the requisite two years of continuous, qualifying religious work in lawful immigration status for at least the two-year period immediately preceding the filing date 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 rejected or in the alternative dismissed.