



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: APR 23 2014 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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
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 withdraw the director's decision. As the present record does not support approval of the petition, the AAO will remand the petition for further action and consideration.

The petitioner is a Hindu 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 Hindu priest. The director determined that the petitioner failed to establish the beneficiary's denominational membership during the two years immediately preceding the filing of the petition.

On appeal, the petitioner submits a brief and additional evidence.

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)(1) provides that, in order to be eligible for classification as a special immigrant religious worker, an alien must have been a member of the petitioning organization's religious denomination for at least the two years immediately preceding the filing date of the petition.

The USCIS regulation at 8 C.F.R. § 204.5(m)(5) provides the following definitions:

Denominational membership means membership during at least the two-year period immediately preceding the filing date of the petition, in the same type of religious denomination as the United States religious organization where the alien will work.

Religious denomination means a religious group or community of believers that is governed or administered under a common type of ecclesiastical government and includes one or more of the following:

- (A) A recognized common creed or statement of faith shared among the denomination's members;
- (B) A common form of worship;
- (C) A common formal code of doctrine and discipline;
- (D) Common religious services and ceremonies;
- (E) Common established places of religious worship or religious congregations; or
- (F) Comparable indicia of a bona fide religious denomination.

The petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on January 10, 2013. The petitioner submitted evidence that it employed the beneficiary in R-1 nonimmigrant status from October 1, 2012, to August 22, 2013, and that the beneficiary was previously employed by [REDACTED] in R-1 nonimmigrant status from November 14, 2007, to September 30, 2012.

The petitioner stated in the petition that there is no formal relationship between the petitioning organization and [REDACTED] but that both organizations “belong to the Hindu denomination.” In a January 8, 2013 letter accompanying the petition, the petitioner described the proposed duties and required qualifications for the position of Hindu priest. The petitioner submitted evidence of the beneficiary’s credentials in the form of certificates earned (one of which was earned by the beneficiary at [REDACTED] and evidence of past compensation from the petitioner and [REDACTED]

On April 9, 2013, the director issued a Request for Evidence (RFE), in part requesting evidence that the beneficiary had the required membership in the religious denomination for two years immediately preceding the filing of the Form I-360. In response to the RFE, the petitioner submitted a letter from the petitioner, dated May 15, 2013, stating that the beneficiary was a member of the Hindu religion for the two-year period immediately preceding the filing of the Form I-360. The petitioner stated that there is no documentation provided by Hindu religious organizations evidencing the date that a person becomes

a member of the Hindu religion, such as a certificate of baptism by Christian denominations. The petitioner further asserted that, while the petitioner and [REDACTED] do not share a governing body, they are governed under a common type of ecclesiastical government sharing a common creed and form of worship within the Vaishnavism branch of Hinduism. The petitioner's letter asserted and described various commonalities between the two organizations.

The petitioner also submitted a May 22, 2013 letter from [REDACTED] stating that it employed the beneficiary as a full-time Hindu priest from November 14, 2007, until September 30, 2012, and that [REDACTED] is "part of the Sri Vaishnava sect of the 'Hindu Religion.'" The petitioner additionally submitted copies of various certificates issued to the beneficiary for Hindu religious training between 1988 and 2009.

On August 1, 2013, the director denied the petition, finding that the petitioner failed to establish the beneficiary's denominational membership during the two years immediately preceding the filing of the petition. The director stated that "mere similarities in religious practices do not serve to make unrelated religious organizations members of the same 'religious denomination'" and "[t]he petitioner has not established that there is a common governing body between its organization and [JET] where the beneficiary was working prior to September 18, 2012."

On appeal, the petitioner submits an affidavit from the petitioner's president stating that the beneficiary has been a member of the Hindu religion since birth and that the beneficiary was employed by [REDACTED] as a full-time priest from November 2007 until September 30, 2012, and thereafter by the petitioner as a full-time priest. The affidavit states that [REDACTED] is of the same religious denomination as the petitioner and shares a common form of worship, common religious services and common ceremonies as the petitioner. The affidavit sets forth the petitioner's organizational structure, officers, directors, committees and priest hiring process. The petitioner also submitted copies of documentation previously submitted in support of the petition and in response to the director's RFE. The petitioner's brief in support of the appeal states that the petitioner and [REDACTED] are the same type of religious denomination and that the petitioner has established beneficiary's denominational membership during the two years immediately preceding the filing of the petition.

The regulations do not require the petitioner to demonstrate "that there is a common governing body" between its organization and the beneficiary's former employer, as stated by the director. The regulation at 8 C.F.R. § 204.5(m)(5) instead defines "religious denomination" as a religious group that is administered under a "common type" of government, in addition to having one or more of the listed characteristics in common. Further, the definition of "denominational membership" includes membership in "the same type of religious denomination" during the two year period immediately preceding the filing of the petition.

The evidence submitted establishes that the beneficiary has been a member of the same type of religious denomination as the petitioning organization for at least two years immediately preceding the filing of the petition.

The above discussion indicates that the petitioner has overcome the only stated basis for denial of the petition. However, review of the record shows an additional ground of eligibility that has not been established. The AAO conducts appellate review on a *de novo* basis. See *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The record does not indicate that USCIS has conducted a compliance review inspection with regard to the instant petition. The regulation at 8 C.F.R. § 214.2(r)(16) provides:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, or satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

The director shall determine whether the petitioner has satisfied the regulation at 8 C.F.R. § 214.2(r)(16) and whether a compliance review, onsite inspection or other verification of the petitioner's claims is appropriate in the instant petition.

The director may request such additional evidence as deemed warranted and must give the petitioner a reasonable opportunity to submit additional evidence in support of its position.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has been met.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, shall be certified to the AAO for review.