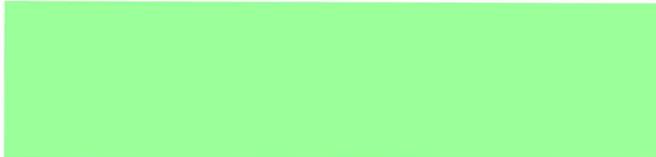


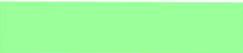


U.S. Citizenship
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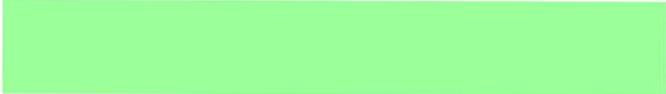
DATE: AUG 20 2014

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:

SELF-REPRESENTED

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

for 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. We 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 religious leader. The director determined that the petitioner failed to establish that the beneficiary had the requisite two years of continuous, qualifying religious work experience immediately preceding the filing of the petition. The director also found that the petitioner failed to establish the beneficiary's qualifications for the proffered position and how it intends to compensate the beneficiary.

On appeal, the petitioner submits 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, 2015, 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, 2015, 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 first issue to be considered is whether the petitioner established that the beneficiary was continuously employed as a religious worker for at least two years immediately preceding the filing of the petition.

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 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 Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, was filed on April 26, 2013. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work in lawful immigration 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 [Internal Revenue Service] documentation that the alien received a salary, such as an IRS Form W-2 [Wage and Tax Statement] 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.

Accompanying the Form I-360 petition, the petitioner submitted evidence that the beneficiary entered the United States on April 7, 2008 in R-1 nonimmigrant status authorizing his employment with [REDACTED] Georgia, until July 1, 2010, and that he was later granted R-1 status authorizing his employment with [REDACTED] from March 27, 2012 to September 26, 2014.

At the time of filing, the petitioner also submitted a "Certificate of Work," issued by the Branch of [REDACTED] on March 5, 2007, stating that the beneficiary served as a

“head of teachers in Buddha’[s] teachings” in [REDACTED] Province from April 20, 2000 to March 5, 2007. In addition, the petitioner submitted an “Authorized Confirmation” from the District Buddhism Organization, Head of the Buddhism Education Office, [REDACTED] District, [REDACTED] Province, [REDACTED] stating that the beneficiary was currently the Vice President of the District Buddhism Organization, the head of the [REDACTED] and head of [REDACTED] [REDACTED] District, [REDACTED] Province. Although the translation of the document is undated, the copy of the accompanying original document is dated in 2006. Neither of these documents provides evidence of the beneficiary’s work experience during the qualifying two-year period.

The director issued a Request for Evidence (RFE) on August 14, 2013, asking, in part, that the petitioner provide evidence that the beneficiary had been continuously performing qualifying religious work for at least two years immediately preceding the filing of the petition. Specifically, the petitioner was asked to submit experience letters from [REDACTED] and any additional employers showing the beneficiary’s duties on a weekly basis, the employer’s name, dates of employment, hours worked per week, and the form and amount of compensation received by the beneficiary. The petitioner was further asked to establish that any experience by the beneficiary while in the United States was gained while the beneficiary was in lawful immigration status. In response to the director’s RFE, the petitioner again submitted copies of the Certificate of Work and Authorized Confirmation, discussed above.

The director denied the petition on November 29, 2013, in part finding that the petitioner failed to establish that the beneficiary had continuously performed qualifying religious work for at least two years immediately preceding the filing of the petition. The director noted that the petitioner had not submitted experience letters pertaining to the relevant qualifying period.

On appeal, the petitioner submits a letter from the beneficiary wherein the beneficiary states that he was ordained as a monk on May 15, 1984 and has worked as a monk continuously since that time. The petitioner further submits letters from several organizations regarding the beneficiary’s work experience. In an undated letter from [REDACTED], [REDACTED] the Abbot of that organization states that the [REDACTED] temple employed the beneficiary as a monk from April 7, 2008 to July 30, 2010. This letter predates the relevant qualifying period. The petitioner also submits an unsigned and undated letter from the [REDACTED], stating that the beneficiary “provided his service to our members” from July 30, 2010 to June 15, 2011. The letter does not identify its author, establish how the author had knowledge of the beneficiary’s stated service, or indicate what the beneficiary’s duties were during the stated period of service. The third letter submitted by the petitioner is an undated letter from the President of [REDACTED] stating that the beneficiary worked as a minister for that organization from June 15, 2011 to January 15, 2013. Finally, in a December 20, 2013 letter, the president of the petitioning temple states that the beneficiary “[has] been at our temple since January 15, 2013 to present.”

As discussed above, the letter from [REDACTED], stating that the beneficiary worked for that organization from July 30, 2010 to June 15, 2011 does not provide sufficient information to establish the beneficiary's qualifying work experience. Additionally, on the Form I-360, the petitioner stated that at the time of filing the petition, the beneficiary lived at [REDACTED]. The record identifies this address as that of [REDACTED]. This is inconsistent with the petitioner's assertion that the beneficiary had been working for the petitioner since January 15, 2013 in [REDACTED] Florida. Furthermore, although the letter from [REDACTED] states the beneficiary worked for that organization from July 15, 2011 to January 15, 2013, the petitioner provided no additional documentation, such as evidence of compensation, to establish that the beneficiary worked at [REDACTED]. This is particularly significant as the petitioner, at the time of filing the petition in June 2013, stated that the beneficiary was living at the address of [REDACTED]. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Accordingly the petitioner failed to establish that the beneficiary had the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition.¹

The second issue to be considered is whether the petitioner established the beneficiary's qualifications for the proffered position.

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

Religious vocation means a formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia, to a religious way of life. The religious denomination must have a class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion. Examples of individuals practicing religious vocations include nuns, monks, and religious brothers and sisters.

Religious worker means an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister.

On the Form I-360 petition, the petitioner indicated that it would employ the beneficiary as a "Religious Leader." Other documents submitted at filing, including descriptions of significant ceremonies and a "Daily Routine and Schedule," identified the position title as "monk."

¹ As the petitioner failed to establish the continuity of the beneficiary's qualifying experience, we do not need to reach the issue of the lawfulness of the beneficiary's experience under 8 C.F.R. §§ 204.5(m)(4) and (11). In any subsequent proceeding, this issue may require further discussion as the petitioner provides no evidence that the beneficiary was authorized to work for any employer other than [REDACTED] during the qualifying period.

Accompanying the petition, the petitioner submitted a document entitled ‘ [REDACTED] [REDACTED] ’ which was typed in English with a notation indicating that it was a “True and Correct translation to the original.” The document indicated that the beneficiary was ordained as a novice on July 6, 1972 and as a monk on May 15, 1984. The submitted Certificate of Work and Authorized Confirmation, discussed previously, listed the same ordination date.²

The director’s August 14, 2013 RFE requested evidence of the beneficiary’s qualifications as a member of a religious vocation. Specifically, the director noted that the petitioner had submitted an English translation of the beneficiary’s ordination certificate without including the original. The director instructed the petitioner to submit a copy of the original certificate. In response to the RFE, the petitioner again provided only the purported translation of the ordination certificate. In denying the petition, the director found that the petitioner failed to establish that the beneficiary was qualified for the religious vocation.

On appeal, the petitioner submits a copy of the beneficiary’s original ordination booklet from the [REDACTED] [REDACTED] with a certified handwritten English translation that is consistent with the previously submitted typed translation of the document. Accordingly, we find that the petitioner has established the beneficiary’s qualifications for the religious vocation. We will withdraw the director’s findings on this issue.

The final issue to be considered is whether the petitioner has established how it intends to compensate the beneficiary.

The USCIS regulation at 8 C.F.R. § 204.5(m)(10) states:

Evidence relating to compensation. Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

At question 5.d. of the employer attestation on the Form I-360, which asks the petitioner to describe the proposed salaried and non-salaried compensation, the petitioner entered, “Please see letter from temple which describes non-salaried compensation.” A review of the record indicates that such a letter was not submitted at filing. Accompanying the petition, the petitioner submitted a copy of a May 7, 2001 warranty deed for land located in [REDACTED] County, Florida, a copy of a Florida tax bill for the

² Although the submitted English translation of the Certificate of Work lists the beneficiary’s ordination date as February 15, 1984, the date is written in English on the original copy as “15 / 5 / 1984.”

property at that location, and copies of the petitioner's checking account statements from [REDACTED] for October, November and December of 2012.

The director's August 14, 2013 RFE noted that the petitioner failed to describe the proposed compensation, and instructed the petitioner to provide verifiable evidence of how it intends to compensate the beneficiary. Specifically, the director asked the petitioner to provide verifiable documentation that room and board would be provided, budgets showing monies set aside for expenses such as salaries and leases, audited financial statements for years 2011 and 2012, bank statements for the period April 2011 through March 2013, or the petitioner's tax returns for 2011 and 2012.

In response to the RFE, the petitioner submitted a January 30, 2013 letter from the petitioner's president stating that, consistent with Buddhist tradition and beliefs, the beneficiary would not receive monetary compensation. He stated that the community would provide the beneficiary's food, living expenses, and medical expenses. The petitioner also submitted additional copies of its previously submitted bank statements.

In denying the petition, the director determined that the evidence submitted was insufficient to establish the petitioner's ability to provide the proffered compensation. The director determined that the petitioner failed to submit all of the requested bank statements and failed to provide requested IRS documentation or comparable, verifiable evidence. The director found that the three submitted bank statements were not recent and not sufficient on their own to establish the petitioner's ability to compensate the beneficiary.

On appeal, the petitioner submits a letter signed by members of the "[REDACTED] County" indicating their intent to provide the beneficiary with medical care, room and board, and food:

When our monk receives medical care, we would collect donations from each individual members [sic] or use donations from that of the temple, which were collected over the years. Since our temple has no mortgage payment or any major financial obligations, we should be able to take care of [the beneficiary's] medical needs. As for room and board, [the beneficiary] will be residing at [the petitioning temple]. And as a monk at the temple, [the beneficiary] will receive food services from members of the temple community.

The petitioner also submits copies of its [REDACTED] checking account statements from April 2011 to May 2013, showing positive monthly ending balances ranging from \$1,706.73 to \$22,186.22. While the petitioner states that housing will be provided for the beneficiary at the temple, no evidence has been submitted to establish that the petitioner actually has housing available for the beneficiary at its temple. The evidence presented is insufficient to establish that the petitioner has the ability to provide the proffered non-salaried compensation.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to

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NON-PRECEDENT DECISION

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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 not been met.

ORDER: The appeal is dismissed.