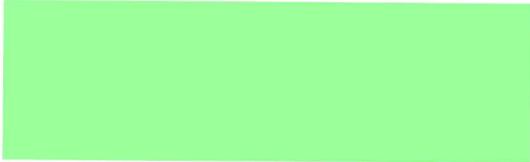


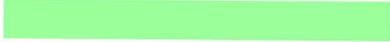


U.S. Citizenship  
and Immigration  
Services

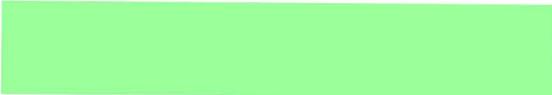
(b)(6)



DATE: JAN 31 2014 OFFICE: CALIFORNIA SERVICE CENTER



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. Because the record, as it now stands, does not support approval of the petition, the AAO will remand the petition for further action and consideration.

The petitioner is a [REDACTED]. 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 minister/monk. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits additional documentation and states that it has established that the beneficiary had the requisite two years of continuous work experience as a minister/monk immediately preceding the filing date of the petition and that the petition should be approved.

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 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 November 2, 2012. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work 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.

At the time of filing the Form I-360 petition, the petitioner indicated that the beneficiary resided outside of the United States in Cambodia. In an addendum accompanying the petition, the petitioner stated that the beneficiary has been a monk since 2000, and "was appointed to be an advisor of [REDACTED] on January 1, 2008. The petitioner submitted a copy of the beneficiary's letter of appointment to that position. The petitioner also submitted copies of certificates issued to the beneficiary in 2007 and 2008, each of which identified the beneficiary as a "monk."

On December 20, 2012, the director issued a Request for Evidence (RFE) asking, in part, that the petitioner provide additional evidence that the beneficiary had been working in a qualifying position during the two years immediately preceding the filing of the

In response to the director's request, the petitioner provided ordination documentation showing that the beneficiary was ordained as a Buddhist monk on July 15, 2007. The petitioner also submitted the

beneficiary's personal biography, dated January 1, 2008, issued by the "Kingdom of Cambodia" and signed by the beneficiary, stating that the beneficiary became a monk at the age of 19 years (Date of Birth: April 20, 1981) and had continued as a monk until the date of the biography, a period of 8 years.

On May 14, 2013, the director denied the petition, finding that the petitioner failed to establish that the beneficiary had the requisite two years of qualifying work experience immediately preceding the filing of the petition.

On appeal, the petitioner provides a Residence Certificate from a monastery commission, dated June 8, 2013, which states that the beneficiary was ordained as a novice on February 29, 2000, and as a Buddhist monk on July 15, 2007, having never left the monkhood since that time. The document further indicates that the beneficiary has been provided Buddhist housing at [REDACTED] province since March 20, 2004. The petitioner submits a certificate, dated June 8, 2013, which states that the beneficiary is teaching [REDACTED] province in the Buddhist and Mentality Education Program from 7:00 pm to 8 pm. The petitioner also submits a certificate, dated June 7, 2013, from the City Buddhist Chief, noting the beneficiary's occupation as a monk.

The evidence of the beneficiary's ordination along with the referenced documentation submitted on appeal overcomes the stated basis for denial of the petition. When establishing prior employment, the above cited regulation asks for IRS documentation of non-salaried compensation if available, and for comparable evidence of religious work if employed outside the United States. The Residence Certificate from a monastery commission, submitted on appeal, demonstrates that the beneficiary was provided housing (nonmonetary compensation) by Buddhist religious organizations since at least 2004. The documentation of record, taken as a whole, establishes that the beneficiary has been employed as a Buddhist monk for at least two years preceding the filing of the petition herein. The petitioner has, therefore, overcome the only stated basis for denial of the petition.

However, review of the record shows additional obstacles to approval of the petition. The AAO may deny an application or petition that fails to comply with the technical requirements of the law 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 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The USCIS regulation at 8 C.F.R. § 204.5(m)(12) states:

*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, 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 record does not contain evidence of a compliance review, onsite inspection or other verification of the petitioner's claims. The director shall determine whether the petitioner has satisfied the regulation at 8 C.F.R. § 204.5(m)(12) and whether a compliance review, onsite inspection or other verification of the petitioner's claims is appropriate in the instant petition.

Further, the petitioner failed to establish 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.

With regard to the beneficiary's compensation, the Form I-360 petition states that monks in the Buddhist faith are prohibited from having money or possessions beyond the ordinary furnishings of a monk and that monks live off the charity of others. The petitioner stated that the only compensation to be paid to the beneficiary is "a place to live, meal[s], clothes and the necessities of life."

The petitioner presented evidence of its ownership of real estate which serves as its place of worship. The petitioner has not demonstrated, however, where the beneficiary will actually live. The petitioner did not submit evidence of living quarters within the petitioner's temple, nor has the petitioner provided proof of other living quarters for the beneficiary that would be paid for by the petitioner. Thus, the petitioner has not established how it will compensate the beneficiary by way of providing for his housing.

The petitioner submitted copies of four months of bank statements and stated that those statements are evidence of its cash balances which show the ability to pay for any living expenses for the beneficiary which are not provided by donations and gifts from its congregants. The bank statements, however, are insufficient to show the ability to provide for the beneficiary's room, board and other necessities as claimed. The record contains no evidence of the petitioner's budgets,

expenses or regular receipts. Therefore, it cannot be determined from the information provided that the petitioner's funds are sufficient to pay its ongoing expenses plus the non-salaried compensation of the beneficiary.

The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. 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).

**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, is to be certified to the Administrative Appeals Office for review.