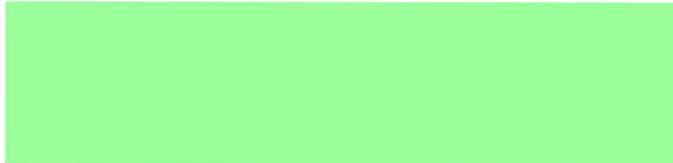


(b)(6)

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



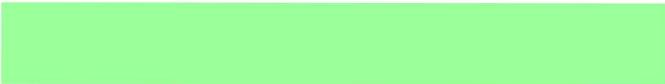
U.S. Citizenship
and Immigration
Services



DATE: **MAR 04 2015**

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office and we dismissed the petitioner's appeal. The matter is now before us on a motion to reopen. We will grant the motion, withdraw the decision in part, and affirm the decision in part. The petition will remain denied.

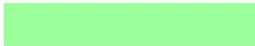
The petitioner filed Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on April 26, 2013, seeking to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4). The petitioner, a Buddhist temple, seeks to employ the beneficiary as a religious leader. The director denied the petition on November 29, 2013, having determined that the petitioner had not established: (1) that the beneficiary had the requisite two years of continuous, qualifying religious work experience immediately preceding the filing of the petition; (2) the beneficiary's qualifications for the proffered position; and (3) how the petitioner intends to compensate the beneficiary. In dismissing the appeal on August 20, 2014, we withdrew ground (2) but agreed with the director's findings on grounds (1) and (3).

On motion, the petitioner submits letters, utility bills, photographs, and other evidence.

I. Law

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).

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). The petitioner's motion meets this requirement, and therefore we grant the motion.

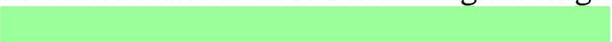
II. Facts and Analysis

a. Past Experience

The first issue under consideration concerns the beneficiary's employment during the two years immediately preceding the filing of the petition. The regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary has been working in a qualifying religious capacity, 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 on April 26, 2013. The 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.

The record shows that the beneficiary first entered the United States as an R-1 nonimmigrant religious worker on April 7, 2008, authorized to work at  in

Georgia until July 1, 2010. On Part 3 of Form I-360, instructed to provide the beneficiary's current residential address, the petitioner provided address.

Evidence submitted with the petition included a copy of Form I-797B, Notice of Action, dated October 4, 2012, indicating approval of a nonimmigrant petition to allow the beneficiary to work at Pennsylvania as an R-1 nonimmigrant religious worker from March 27, 2012 to September 26, 2014. Evidence of R-1 nonimmigrant status is not evidence that qualifying employment took place.

The director issued a request for evidence (RFE) on August 14, 2013, instructing the petitioner to submit detailed experience letters from and any additional employers, and to establish that the beneficiary was in lawful immigration status while working in the United States. The petitioner's response included copies of documentation from the beneficiary's native but these materials predate the beneficiary's 2008 arrival in the United States and do not establish qualifying experience during the 2011-2013 qualifying period.

The director based the denial of the petition in part on the 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 petitioner's appeal included letters indicating that the beneficiary worked at Pennsylvania, from July 30, 2010 to June 15, 2011; at from June 15, 2011 to January 15, 2013; and at the petitioning temple from January 15, 2013, up to the time of filing. The letter from is unsigned. Other letters attested to experience outside the two-year qualifying period.

In our first appellate decision, we stated that the letter from contained insufficient information about the beneficiary's experience, and that the petitioner had not provided documentary evidence to support the assertions in the letter from. We also stated that the beneficiary's continued use of address in, Georgia is inconsistent with the petitioner's assertion that the beneficiary has worked for the petitioner in Florida, since January 2013.

We also noted that the petitioner submitted "no evidence that the beneficiary was authorized to work for any employer other than during the qualifying period." An R-1 nonimmigrant religious worker may work for more than one employer, but each employer must file its own petition with all required supporting documentation. Unauthorized work for other employers constitutes a violation of nonimmigrant status. See 8 C.F.R. §§ 214.2(r)(2) and (13). USCIS records identify no other approved nonimmigrant petition filed on the beneficiary's behalf that would have permitted him to work for an employer other than during the 2011-2013 qualifying period.

On motion, the petitioner asserts that the beneficiary's Georgia address appears on Form I-360 because an attorney prepared the petition form based on documents provided by the petitioner and the beneficiary, and the beneficiary's only identification document at that time was issued when he still lived in Georgia. This explanation is consistent with the record, and apart from Form I-360, there is no other indication that the beneficiary lived in Georgia in 2013. The preponderance of available evidence

supports the assertion that the beneficiary was not still residing in Georgia at the time the petitioner filed the petition.

The petitioner states: “Buddhist monks, like [the beneficiary], are missionaries so they would move from temple to temple to provide their services.” The petitioner submits a letter from [REDACTED] president of [REDACTED] providing further details about the beneficiary’s asserted employment there and stating that the beneficiary worked there “about 40 to 48 hours a week for 7 days . . . from June 15, 2011 to January 15, 2013.” The petitioner submitted copies of correspondence concerning the beneficiary’s 2010 transfer from [REDACTED] and his 2013 transfer from [REDACTED] to the petitioning temple but provided no other documentation to establish that the beneficiary worked at [REDACTED]

In our August 20, 2014 dismissal notice, we found that the petitioner had not submitted “sufficient information to establish the beneficiary’s qualifying work experience” at [REDACTED] and that the petitioner had not submitted documentary evidence to corroborate the assertion that the beneficiary worked continuously at [REDACTED]. The petitioner’s submission on motion does not resolve these issues of concern. The petitioner has not submitted any documentary evidence, such as evidence of compensation from any other temples to establish the beneficiary’s experience or material support there. 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)). We will, therefore, affirm the finding that the petitioner has not submitted sufficient evidence to establish the beneficiary’s required prior experience.

b. Intended Compensation

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

The petitioner’s initial filing included copies of bank statements from October through December 2012 and documentation that the petitioner owns the site where the temple is located. In the August 2013 RFE, the director stated that the petitioner had not described the proposed compensation, and instructed the petitioner to provide verifiable documentation that room and board would be provided. The director also instructed the petitioner to submit one of the following: audited financial statements for years 2011

and 2012; bank statements from April 2011 through March 2013; or the petitioner's tax returns for 2011 and 2012. The director stated that, if IRS documentation is not available, then the petitioner must explain its absence.

In response to the RFE, the petitioner stated that the beneficiary would receive no salary, but that the community would provide the beneficiary's food, living expenses, and medical expenses. The petitioner submitted additional copies of its previously submitted bank statements.

The director, in the denial notice, stated that the evidence submitted was insufficient to establish the petitioner's ability to provide the proffered compensation, and that the petitioner had not submitted the evidence requested in the RFE.

On appeal, the petitioner submitted a letter signed by members of the [REDACTED] indicating their intent to provide the beneficiary with medical care, room and board, and food. The petitioner also submitted copies of bank statements from April 2011 to May 2013, showing monthly ending balances ranging from \$1,706.73 to \$22,186.22. In our August 2014 dismissal notice, we acknowledged these materials, but concluded: "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 motion to reopen includes copies of bank statements, utility bills, and other documents from 2014, and photographs of a house on the temple grounds. The petitioner states that the beneficiary has been living in this house. A photocopy of the beneficiary's Florida Identification Card, issued March 13, 2014, shows the petitioner's address. These new materials establish, by a preponderance of evidence, the petitioner's ability and intention to compensate the beneficiary at the level claimed on the petition. We withdraw our prior finding to the contrary.

The petitioner has overcome this ground for denial, but the ground relating to evidence of past experience remains. Therefore, we will affirm the denial of the petition on that basis.

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, the petitioner has not met that burden.

ORDER: The Administrative Appeals Office's decision of August 20, 2014 is affirmed in part. The petition remains denied.