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**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF I-C-A-

DATE: SEPT. 18, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner, a charitable organization that operates a Hindu temple, seeks to classify the Beneficiary as a special immigrant religious worker to perform services as a priest at [REDACTED] in [REDACTED] Illinois. *See* Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4). The Director, California Service Center, denied the petition. The matter is now before us on appeal. The appeal will be sustained.

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).

## I. QUALIFYING ORGANIZATION

The first issue to be discussed is whether the Petitioner qualifies as a bona fide nonprofit religious organization or a bona fide organization which is affiliated with the religious denomination.

### A. Law

The regulation at 8 C.F.R. § 204.5(m)(3) provides that, in order to be eligible for classification as a special immigrant religious worker, an individual must be coming to work for a bona fide non-profit religious organization in the United States, or a bona fide organization that is affiliated with the religious denomination in the United States. The regulation at 8 C.F.R. § 204.5(m)(5) provides the following definitions:

*Bona fide non-profit religious organization in the United States* means a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the IRS [Internal Revenue Service] confirming such exemption.

*Bona fide organization which is affiliated with the religious denomination* means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code and possessing a currently valid determination letter from the IRS confirming such exemption.

*Tax-exempt organization* means an organization that has received a determination letter from the IRS establishing that it, or a group that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the Internal Revenue Code . . .

Regarding evidence of a petitioner's tax-exempt status, the regulation at 8 C.F.R. § 204.5(m)(8) requires the following:

*Evidence relating to the petitioning organization.* A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the [IRS] establishing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or

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(iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, as something other than a religious organization:

(A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;

(B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;

(C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and

(D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

## B. Facts and Analysis

The Petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on July 21, 2014, with a January 31, 2012, letter from the IRS. The IRS letter granted the Petitioner tax-exempt status under section 501(c)(3) of the Internal Revenue Code (IRC), and classified the Petitioner as an organization “described in sections 509(a)(1) and 170(b)(1)(A)(vi)” of the IRC. The Petitioner submitted a copy of its constitution, which described the organization’s purposes as follows:

- i) To establish and maintain Hindu Temples built and serviced in the traditional Hindu style. [REDACTED] is one of the Temple projects being operated for this purpose.
- ii) To establish and maintain a community center.
- iii) To promote Sanatana Dharma (Religion and Traditions) and culture.
- vi) To promote inter-religious, social, and cultural understanding.
- v) To support humanitarian causes

The Petitioner also submitted a copy of its 2012 IRS Form 990, Return of Organization Exempt From Income Tax, which described the Petitioner’s most significant activities as “prayer services & cultural education.” In addition, the Petitioner submitted printouts from [REDACTED] website, [REDACTED] which included information about the religious services offered.

In a request for evidence (RFE) dated September 27, 2014, the Director noted that the IRS letter classified the Petitioner as a public charity under section 170(b)(1)(A)(vi) of the IRC. While section 170(b)(1)(A)(i) of the Code refers specifically to churches and related organizations, section 170(b)(1)(A)(vi) of the Code has no such limitations. The Director requested additional evidence to establish the Petitioner's religious nature and purpose, including a copy of its IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, or IRS Form 1024, Application for Recognition of Exemption Under section 501(a). In response to the RFE, the Petitioner submitted copies of brochures, flyers, and media articles related to its observance of religious festivals and other religious activities.

The Director denied the Form I-360 on December 4, 2014, finding that the record did not establish that the Petitioner is a religious organization. The Director noted that the Petitioner did not submit the requested IRS Form 1023 or IRS Form 1024, and found that the submitted evidence did not demonstrate that the Petitioner is "primarily religious." In a brief submitted on appeal, the Petitioner states that the IRS forms requested by the Director are not required under the regulations, and that it has submitted sufficient evidence to establish that it is a religious organization and that it has been granted tax-exempt status under section 501(c)(3) of the IRC.

While the Petitioner's brief quotes from the previous regulations for special immigrant religious workers that are no longer in effect, the Petitioner is correct that the current regulations do not require submission of an IRS Form 1023 or IRS Form 1024. The Petitioner's organizing instrument indicates that its primary purpose is the operation of a Hindu temple, and the record includes documentation of the religious nature of the Petitioner's activities. We find this evidence sufficient to establish the Petitioner's religious nature and purpose.

The Petitioner has established that it is a religious organization and that it possesses a currently valid determination letter from the IRS confirming its 501(c)(3) tax-exempt status. The Petitioner therefore meets the definition of a bona fide nonprofit religious organization under 8 C.F.R. 204.5(m)(5), and has satisfied the evidentiary requirements of 8 C.F.R. § 204.5(m)(8). We withdraw the Director's findings on this issue.

## II. QUALIFYING EXPERIENCE

The next issue to be discussed is whether the Petitioner established that the Beneficiary was engaged in continuous, qualifying religious work during the two years immediately preceding the filing of the Form I-360.

### A. Law

The regulation at 8 C.F.R. § 204.5(m)(4) requires a petitioner to show that the beneficiary has been working as a minister or in a qualifying religious occupation or vocation continuously for at least the two-year period immediately preceding the filing of the Form I-360. Therefore, this Petitioner must

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establish that the Beneficiary was continuously performing qualifying religious work throughout the two-year period immediately preceding July 21, 2014.

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 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.

## B. Facts and Analysis

The record indicates that the Beneficiary was in the United States and held R-1 nonimmigrant religious worker status authorizing his employment with the Petitioner throughout the two-year qualifying period. In a June 25, 2014, letter accompanying the Form I-360, the Petitioner stated that it has employed the Beneficiary as a Hindu priest since June 20, 2012, and that he “earns a monthly annual salary of \$1,120” in addition to receiving “allowances for apartment, utilities, car insurance, transportation, and health insurance equivalent to (\$1,270)/month.” The letter also provided a description of the Beneficiary’s daily duties. The submitted printout from [REDACTED] website listed the Beneficiary as a priest at the temple.

As evidence of salaried compensation, the Petitioner submitted photocopies of processed checks to the Beneficiary in the amount of \$1,016.87 each for the months of December 2013 through May 2014. The Petitioner submitted copies of the Beneficiary’s 2012 and 2013 IRS Forms W-2, Wage and Tax Statements, indicating income from the Petitioner in the respective amounts of \$6,735.55

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and \$11,500.00. The Petitioner also submitted uncertified copies of the Beneficiary's 2012 IRS Form 1040EZ, Income Tax Return for Single and Joint Filers With No Dependents, and 2013 IRS Form 1040, U.S. Individual Income Tax Return, reflecting the same amounts indicated on the Forms W-2.

Regarding non-salaried compensation, the Petitioner submitted a list of six 2013 checks, totaling \$6,259.79, indicating payment to [REDACTED] on the Beneficiary's behalf from the Petitioner's account. The Petitioner also submitted a list of eleven 2013 checks, totaling \$6,550.00, with the notation that they were paid to [REDACTED] on the Beneficiary's behalf. The Petitioner submitted photocopies of two of the listed checks to [REDACTED] and four of the listed checks to [REDACTED].

The Director's September 27, 2014, RFE requested additional evidence of the Beneficiary's employment during the two-year qualifying period, including documentation of his salaried and non-salaried compensation during that time. In response, the Petitioner resubmitted copies of the Beneficiary's Forms W-2 and 1040, and submitted copies of paystubs and paychecks for June and July 2014 in the amount of \$1,016.87 each.

Regarding non-salaried compensation, the Petitioner submitted a letter from the management of [REDACTED] stating that the Beneficiary occupies an apartment at [REDACTED] in [REDACTED] Illinois, and a copy of the Beneficiary's driver's license, issued [REDACTED] 2012, indicating the same address. Other documentation in the record, including the beneficiary's federal income tax returns, also reflects that address. The Petitioner submitted copies of four checks issued from the Petitioner to [REDACTED] between June 2014 and September 2014. The Petitioner also submitted a letter from [REDACTED] stating that the Beneficiary "gets his health insurance from [REDACTED] Illinois" and that it is paid for by the Petitioner.

In addition, as noted above, the Petitioner submitted many media articles in response to the RFE as evidence of its religious activities. Several of these articles, from 2013 and 2014, identified the Beneficiary as the Petitioner's priest and included descriptions and photos of his religious services. The submitted brochures and programs also identified the Beneficiary as a priest for the Petitioner.

The Director stated in her decision that, in a previously filed and approved Form I-129, Petition for a Nonimmigrant Worker, the Petitioner had set forth a higher salary for the Beneficiary than that indicated on the IRS documentation submitted.<sup>1</sup> The Director stated:

As the actual salary compensation is a fraction of the proffered salary, the petitioner either did not pay the proffered salary compensation as indicated on the R-1 petitions, or the beneficiary was not employed in a full-time position. In either case, the

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<sup>1</sup> Letters submitted with the petitioner's previous Forms I-129 indicate that the "wages" listed on the petitions included the value of both salaried and non-salaried compensation.

evidence shows that the petitioner has not established that the beneficiary has the qualifying two-years of experience, as required by the regulations.

On appeal, the Petitioner acknowledges that it provided a lower salary than the figure indicated on the previous petition, but states that it instead provided the Beneficiary with “numerous fringe benefits.” The Petitioner asserts that, “[d]espite this difference in figures, [the Beneficiary] did indeed work full-time.” The Petitioner alternately calculates that, including non-salaried compensation, it provided “roughly 85%” of the previous proffered wage. The Petitioner asserts that this is equivalent to 35 hours per week of compensation at the previously stated rate and thus still qualifies as full-time employment.

As cited above, the regulation at 8 C.F.R. § 204.5(m)(4) requires a petitioner to establish the continuity of the beneficiary’s qualifying work experience during the two years prior to filing, and the regulation at 8 C.F.R. § 204.5(m)(11) specifies required documentation that must be submitted based on the type of compensation or self-support. Neither of these regulations concerning qualifying experience addresses the rate at which a beneficiary must have been compensated. To the extent that the Director found that compensation at less than the proffered rate would disqualify a beneficiary’s otherwise qualifying work experience, we disagree with that interpretation. Therefore, for the purposes of establishing a beneficiary’s qualifying experience, the rate of pay is only relevant if it calls into question whether the beneficiary was in fact working on a continuous, full-time basis as asserted.

In this instance, the Petitioner submitted IRS Forms W-2 to document its salaried compensation of the Beneficiary as required under 8 C.F.R. § 204.5(m)(11), and the record supports the Petitioner’s assertions that it also provided several forms of non-salaried compensation. In addition, the Petitioner submitted numerous media articles and programs noting the Beneficiary’s role in the Petitioner’s religious events and activities over the course of the qualifying period. This evidence supports the Petitioner’s assertions regarding the Beneficiary’s continuous, full-time employment as a priest during that time.

We find the evidence sufficient to establish that the Beneficiary had the requisite two years of continuous, qualifying religious work immediately preceding the filing of the Form I-360. Accordingly, we will withdraw the Director’s finding on this issue.

### III. CONCLUSION

As discussed above, the Petitioner has overcome all stated bases for the denial decision. Accordingly, we will sustain the appeal.

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). The Petitioner has met that burden. Accordingly, we will withdraw the Director’s denial decision and approve the petition.

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**ORDER:** The appeal is sustained.

Cite as *Matter of I-C-A-*, ID# 12910 (AAO Sept. 18, 2015)