

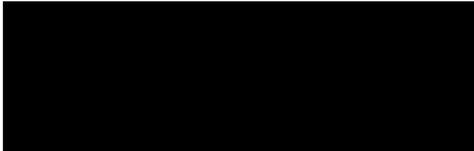
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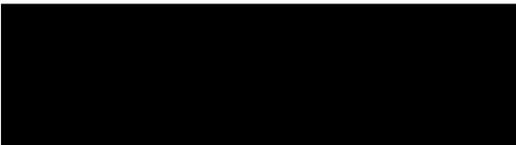


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 07 2010

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Sikh temple. It seeks to classify the beneficiary as a nonimmigrant religious worker under section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1), to perform services as a priest. The director determined that the petitioner had not established that the beneficiary is qualified for the proffered position.

On appeal, counsel asserts that the director did “not state the sufficient basis or reasons for denial,” ignored evidence submitted in response to the Notice of Intent to Deny (NOID), and was influenced by the complaints of “nonmembers.” Counsel submits a letter and additional documentation in support of the appeal.

Section 101(a)(15)(R) of the Act pertains to an alien who:

- (i) for the 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; and
- (ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii).

Section 101(a)(27)(C)(ii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii), pertains to a nonimmigrant who seeks to enter the United States:

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
- (II) . . . 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) . . . 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

As a preliminary matter, we note that, according to the U.S. Department of State (DOS) records, the beneficiary was issued an R-1 nonimmigrant religious worker visa on June 16, 2004, valid until June 14, 2009, to enter the United States to work for [REDACTED] as a raagi musician. DOS and USCIS records reflect that the beneficiary reported his visa as either lost or stolen and it was reissued on February 22, 2005. The record reflects that the beneficiary is not presently working for [REDACTED] and may be engaged in self-employment. The record also reflects that the beneficiary received a check for \$700 from the

petitioning organization in February 2009. The regulation at 8 C.F.R. § 214.1(e) states that a nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act. Under 8 C.F.R. § 214.2(r)(5), extension of status is available only to aliens who maintain R-1 status.

The issues of the beneficiary's prior employment and maintenance of R-1 status are significant insofar as they relate to the application to extend that status. An application for extension is concurrent with, but separate from, the nonimmigrant petition. There is no appeal from the denial of an application for extension of stay filed on Form I-129, Petition for a Nonimmigrant Worker. 8 C.F.R. § 214.1(c)(5). Because the beneficiary's past employment and maintenance of status are extension issues, rather than petition issues, the AAO lacks authority to decide those questions. However, the beneficiary's unauthorized employment may be pertinent in the instant petition in determining his qualifications for the proffered position.

The issue before the AAO is whether the petitioner has established that the beneficiary is qualified for the proffered position.

The regulation at 8 C.F.R. § 214.2(r)(3) contains the following definitions:

Minister means an individual who:

- (A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
- (B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
- (C) Performs activities with a rational relationship to the religious calling of the minister; and
- (D) Works solely as a minister in the United States which may include administrative duties incidental to the duties of a minister.

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 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.

In an April 8, 2009 job offer, the petitioner informed the beneficiary that his duties would include the following:

You will participate in early morning prayers that will primarily be centered upon Ardas and Kirtan prayers which incorporate reading, interpretations and melodies orientated in the praise of the divine power.

You will carry the Holy Boor [*sic*] Guru Granth Sahib to the prayer hall in the morning in accordance with the Sikh religion requirements[.]

You will Recite hymns from the Holy Book and explain the meaning to the congregation, give discourse to the congregation about Sikh history, customs and traditions and events of special significance in the Sikh religion.

You will conduct special events like marriages, births and death ceremonies in accordance with the religious tenets, call out the work of the day from the Holy Book.

You will perform "Akhand Path" Kirtan (Religious Hymns) and retire the Holy Book every evening after prayers.

You will carry out a typical duty of a Sikh priest which is to carry out complex holy rites during the course of the day known as Parkash and Sukhasan.

You would further incorporate singing religious rhymes (Shabads) by playing Harmonium and commentary concerning the meanings and points of clarification to the congregation.

You will carry out the duty of blessings and prayers at the homes of many congregants in addition to extensive study and dedication in accordance with Sikh philosophy.

In an April 8, 2009 letter signed by [REDACTED] as secretary, the petitioner stated:

[The b]eneficiary has served as priest (Sewadar) in [REDACTED] New Delhi, India from February 2nd, 1999 to September 5th, 2006). . . . His duties in his prior employment included incorporating singing religious hymns, shabads, by playing Harmonium (Music Instruments). He carried out the rituals of blessings and prayers. He has spent many hours studying and dedicating in accordance with the Sikh Philosophy. He participated in dawn prayers that would primarily be

centered upon Ardas and Kirtan and, he used to carry the Holy Book "Guru Granth Sahib" to the prayer hall in the morning in accordance with the Sikh religion requirements. He also conducted special events like marriages, births and death ceremonies in accordance with the religious tenets, call out the work of the day from the Holy Book every day, perform "Akhand Path" Kirtan and retire the Holy Book every evening after prayers. His [sic] carried out complex holy rites like Parkash and Sukhasan during the course of day.

The petitioner referred to a "detailed Experience Certificate" as evidence of the beneficiary's prior work experience. However, the "Service Certificate," dated September 5, 2006 merely certified that the beneficiary "is an employee of [REDACTED] and had been working for the committee since December 1999. The certificate did not indicate the capacity in which the beneficiary worked or the duties he performed nor did the petitioner provide any other documentation, such as evidence of compensation, to establish the beneficiary performed the work alleged. The petitioner also submitted a copy of a document from [REDACTED] dated May 15, 1984, which certified that:

[The beneficiary] learned Gurbani, Sikh History, and Gurbani rhymes singing by attending this school for three years. He is a good Akhand Pathi (reader of Guru Granth) and good Gurbani singer. He is able to perform services as a Sikh priest and Gurbani rhymes singer at any place.

In April 2009, the California Service Center Fraud Detection Operations received information indicating that the petitioner had petitioned for two individuals and was in the process of petitioning for a third alleging that the individuals were qualified religious workers when, in fact, it was using the religious worker provisions to gain legal status for unqualified individuals. On April 15, 2009, an immigration officer (IO) met with five individuals who stated that they had been instrumental in building the organization from its inception in 1999 and could not condone the fraudulent activity now taking place. The members charged [REDACTED] with being the mastermind behind the deception. They further stated that the alleged religious workers "do not know the ABC's of the Religion much less qualify to be a Priest or any work in any capacity within the" petitioning organization. They stated that the three alleged religious workers "were nothing more than truck drivers and maintenance workers in India and never worked in a religious capacity." Regarding the beneficiary of this petition, these members stated that they were not aware that he was working at the petitioning organization but stated, "A check of \$1,400 a month is [] given to [the beneficiary] and he gives back \$700 in cash. Since January 2009, [the beneficiary] has been given \$700 a month; yet, [he is not] working in a religious capacity for the" petitioner.

On April 28, 2010, the IO visited the petitioner's premises and talked with the president of the organization, [REDACTED] stated that the members who met with the IO were disgruntled because of the replacement of the priest. However, he stated that although he was aware that the beneficiary and others had been working at the organization, he could not verify

their salary or whether they worked full time. He stated that the beneficiary “had been performing priest duties on Sunday.”

In a request for evidence (RFE) dated October 8, 2009, the director requested additional documentation to establish the beneficiary’s qualifications for the proffered position, including evidence of ordination, if applicable. In response, the petitioner provided copies of previously submitted documentation and submitted a statement outlining the beneficiary’s “religious participation history,” indicating that the beneficiary had worked in the United States as follows:

June 23, 2004 – May 12, 2004
May 2, 2005 – May 26, 2006
September 23, 2006 – January 1, 2009

On December 3, 2009, the director notified the petitioner of the charges of fraud against the organization and her intent to deny the petition. The director requested evidence of the beneficiary’s prior R-1 employment; additional information requiring the beneficiary’s work history, including the titles of the positions he held, detailed job descriptions, and the dates the beneficiary held the positions; and evidence of his ordination or authority to conduct religious worship and perform other services normally performed by members of the clergy.

In response, the petitioner submitted a copy of a December 16, 2009 letter from the [REDACTED], stating that the beneficiary was employed by the organization from September 25, 2006 to April 13, 2008 as an assistant priest and a member of its Keertan Jatha; however, it did not specify the exact duties performed by the beneficiary. The letter indicated that the organization provided the beneficiary with free housing and food. Copies of the beneficiary’s Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, from [REDACTED] for the years 2006 and 2008, reflect that it paid the beneficiary wages of \$1,800 and \$2,250, respectively. The petitioner also submitted uncertified copies of the beneficiary’s unsigned IRS Form 1040EZ, Income Tax Return for Single and Joint Filers with No Dependents, for 2006 and IRS Form 1040, Individual Income Tax Return for 2008, on which he reported this income. In 2008, the beneficiary also claimed \$11,036 income from his trucking business. The petitioner submitted no documentation to verify the beneficiary’s employment in 2007.

The petitioner resubmitted the copy of the “service certificate” from the [REDACTED] Management Committee and its statement of the beneficiary’s work in the United States. The petitioner submitted information retrieved from the “sikhwiki.org” website, which states that a “granthi” is a ceremonial reader of the Guru Granth Sahib.” The document further states that there is no ordination of a granthi “apart from initiation as a Sikh.”

Like *Wikipedia*, *SikhiWiki* is an online open-content encyclopedia and there are no assurances about the reliability of the content from this open, user-edited Internet site.¹ See *Lamilem Badasa*

¹ Online content from *SikhiWiki* is subject to the following general disclaimer:

v. *Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). Accordingly, we will not assign weight to information for which *SikhiWiki* is the only cited source.

The petitioner also submitted a copy of a letter from [REDACTED] who denied that he had filed petitions for unqualified persons and stated that the individuals who made the allegations had “tried to sue us in the court and after hearing all the evidence and records, honorable judge has dismissed all of their charges.” The petitioner submitted a copy of the court order dismissing a complaint against [REDACTED] and others on jurisdictional grounds.

The director did not find the petitioner’s evidence persuasive, noting that the court document did not address the evidence presented to the court and that the other documentation submitted by the petitioner is vague and does not address the discrepancies in the record.

Counsel asserts on appeal that the director’s denial “did not state the reasons of rejecting [the beneficiary’s] religious training, knowledge and experience, and that the beneficiary “has extensive training, knowledge and practical experience of actually performing the duties and responsibilities of a Priest in the Sikh religion.” Counsel further asserts that the “experience letters from his previous employers” were submitted “to substantiate the fact that he qualifies for the position offered.”

The evidence, however, does not support counsel’s assertions. First, the documentation indicates that the beneficiary completed his training at the Gurmat-Vidyalya in April 1984 and was certified “competent to perform the duties of Granthi, Kirtan.” The record does not reflect that the beneficiary worked or had any other training until December 2, 1999, when he began working with the [REDACTED]. The May 9, 2006 “service certificate” for that organization, however, does not state the capacity in which the beneficiary worked or his duties.

The petitioner submits for the first time on appeal a copy of a December 12, 2004 letter from [REDACTED]

SIKHIWIKI MAKES NO GUARANTEE OF VALIDITY. *SikhiWIKI* is an online open-content collaborative encyclomedia [sic], that is, a voluntary association of individuals and groups who are developing a common resource of human knowledge. Its structure allows anyone with an Internet connection and World Wide Web browser to alter the content found here. Therefore, please be advised that nothing found here has necessarily been reviewed by professionals with the expertise necessary to provide you with complete, accurate or reliable information. . . . ***SikhiWIKI cannot guarantee, in any way whatsoever, the validity of the information found here.*** It may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the particular area you are interested in learning about. [Emphasis in the original.]

See http://www.sikhiwiki.org/index.php/SikhiWiki:General_disclaimer, accessed on November 5, 2010, a copy of which is incorporated into the record of proceeding.

identified himself as chairman of the board of trustees, stated that the beneficiary “has served as Priest from June 23rd, 2004 thru December 12th 2004,” and that the beneficiary “is a well known and respected Sikh religious scholar” and was “known in the Sikh community for practicing and preaching the teachings of Sikh religion of high moral character, honesty, and dedication.” The petitioner, however, submitted no other documentation to establish that the beneficiary had worked with the [REDACTED] during the period indicated. We note again that [REDACTED] records reflect that the beneficiary was approved for entry into the United States to work for the [REDACTED] in an R-1 status in June 2004. The visa was valid until June 2009. Additionally, after the beneficiary reported the visa lost or stolen, it was reissued on February 22, 2005. The beneficiary entered the United States several times from 2005 to 2009. According to the [REDACTED] however, he worked for that organization only through December 12, 2004. The record does not reflect that the beneficiary was approved to work for any other religious organization in the United States.

The petitioner also submits for the first time on appeal a copy of a May 14, 2010 letter from the Gurdwara [REDACTED] signed by [REDACTED] in which he states that the beneficiary “performed his services” at the gurdwara “from May 02nd to August 30th, 2005” and that he “is a great preacher and he has performed all Sacraments, Marriage Ceremonies, and Cremations.” Again, the petitioner submitted no documentation beyond [REDACTED] statement, to establish that the beneficiary performed the work alleged. Further, even if the beneficiary had performed the work as alleged at the [REDACTED] or with the Gurdwara [REDACTED] it is not evidence that the beneficiary was qualified for the work or that he is qualified for the proffered position.

The petitioner submitted a May 11, 2010 letter from the coordinator of the Sikh Association of Gurdwaras in [REDACTED] who attests to the beneficiary’s qualifications for the proffered position. His opinion is based on [REDACTED] observation of the beneficiary in performing duties as a priest. However, [REDACTED] observations alone are insufficient to establish the beneficiary’s qualifications for the position.

Additionally, the petitioner failed to submit any of this documentation when specifically instructed to do so by the director. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The petitioner submitted a copy of the court petition filed against several of its members in the district court [REDACTED] in which they made allegations similar to those reported to USCIS. As discussed previously, the petition was dismissed on jurisdictional grounds and the court did not reach the merits of the petition. The petitioner also submitted other documentation apparently to indicate that it has the support of its members in some of the actions it has undertaken. However, these documents are not relevant to the beneficiary’s qualifications for the proffered position.

The petitioner has failed to submit sufficient documentation to establish that the beneficiary is qualified for the proffered position.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.