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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **SEP 22 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.

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 sustained.

The petitioner is a Sikh temple. It seeks to extend the beneficiary's status 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 failed to comply with the director's request for evidence (RFE) and therefore had failed to establish that the beneficiary sought to enter the United States to work in a qualifying religious vocation or occupation for at least 20 hours per week.

On appeal, counsel states that the petitioner erroneously applied the terms "a.m." and "p.m.," which led to the confusion regarding the nature and hours of the position. The petitioner submits 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

The issue presented is whether the petitioner has established that the beneficiary seeks to enter the United States to work in qualifying religious work for at least 20 hours per week.

The regulation at 8 C.F.R. § 214.2(r)(1) provides that:

To be approved for temporary admission to the United States, or extension and maintenance of status, for the purpose of conducting the activities of a religious worker for a period not to exceed five years, an alien must:

- (ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week);

In its April 6, 2009 letter submitted in support of the petition, the petitioner stated that it sought to hire the beneficiary on a full-time basis and that his “work-related duties” would include cleansing the area in direct proximity to the Sikh Holy Bible, leading early morning prayers and the “typical duties expected of all Sikh priests, further readings and interpretations known as Parkash and Suhasan,” studies and mediations, and “heading evening prayers.” The petitioner stated that the beneficiary would be paid a salary of \$1,000 per month and be provided with free room and board.

In her May 26, 2009 RFE, the director instructed the petitioner to provide additional evidence regarding the petitioning organization and the proffered position, to include:

Activity: Submit present schedules of religious programs or services organized by the petitioner at the work location. . . . [S]ubmit the present schedule of the petitioning organization and the work location showing the opening hours, weekdays and weekend days schedule, and closing days schedule for the year 2009.

Work Schedule: Submit a weekly work schedule of the beneficiary, showing work in break down hours in practicing specific religious functions and creed. Please indicate the weekdays or weekend days and the complete address and contact information of when and where the beneficiary reports to work.

In response, the petitioner submitted an unsigned and undated document indicating that it offered “full services seven days a week with special services on Wednesday, Fridays, Saturdays and Sundays.” The document also indicates that the petitioner “organizes special functions on days of religious significance” and “special services on the request of congregants to [] celebrate events of personal significance like births, deaths and marriages.” The document further indicates that the temple day starts at 5:00 a.m. when the Head Priest installs the holy book in the prayer hall and ends at 9:00 p.m. with the retiring of the holy book. A priest sits in attendance with the holy book throughout the day and “reads hymns from the Holy Book, interprets and explains the meaning to the congregants and narrates the events from lives of Sikh Gurus and the events from Sikh History and culture.”

The document indicates:

The beneficiary as Priest will be responsible for leading the prescribed morning prayers, carrying the Holy Book Guru Granth Sahib on his head for installation in the prayer hall, for culling the word of the day from Holy book in the morning and explaining its meaning to the congregation from 5:00am to 7:00am everyday. The beneficiary will be the lead priest in performing Kirtan, and will explain the meaning of hymns sung to the congregation. . . . Beneficiary conducts special ceremonies like marriages, births and deaths, etc. The beneficiary will lead the kirtan in the evening also and perform evening prayers and sing prescribed hymns before carrying the Holy Book to the retiring quarter for the night. Beneficiary will also be responsible for coordinating and conduction "Akhand paths" being organized by the temple.

In a June 25, 2009 work letter, [REDACTED] chairman of the petitioner's board of directors, certified that the temple was open seven days a week from 4:00 am to 9:00 pm, and that the beneficiary worked six days a week, from Tuesday through Sunday. [REDACTED] stated that the beneficiary's work schedule was:

5 AM to 10:30PM – Morning Prayer and other duties
10:30PM to 6:30PM – Break
6:30PM to 8:30PM – Evening Prayer and other duties

[REDACTED] stated that the beneficiary's "other duties" included "Teaching Kids Gurbani, Kirtan and Punjabi (Regional language)."

In denying the petition, the director determined that the petitioner had not complied with the RFE in that "no evidence of religious programs or services being offered at the work location was submitted. A work schedule was submitted. But, it is impossible to identify the exact duties and schedule of the beneficiary." The director stated:

[T]he hour at 10:30 PM causes overlapping break and evening prayer hours and makes it impossible to identify the exact time scheduled for break and for carrying [out] duties. In addition, the schedule did not show the exact amount of hours set for teaching Kids and what languages and when the teaching begins and ends. Therefore, the work schedule is not reliable to identify the exact time and job duties of the beneficiary.

The director further stated that while "the petitioner described the beneficiary's duties as sitting in attendance and playing "Kirtan" in the RFE response, the submitted work schedule does not show such duties."

[REDACTED] provides another letter on appeal to clarify and explain his previous letter and the beneficiary's duties and responsibilities. In this August 19, 2009 letter, Mr. Singh states that

¹ Also spelled as [REDACTED] in other documentation in the record.

from 5:00 am to 6:00 am, the beneficiary will “be responsible for reciting specific prayers associated with the removal of the Sikh Holy Book;” that from 6:00 am to 7:00 am, he will be engaged in “Asa Di Var Kirtans,” which “involves the singing of the liturgy of the Sikh religious service;” and from 7:00 am to 10:30 am, he “will be made available to our congregants in a wide variety of contexts.” This includes performing Ardas (formal prayers) “in cases involving sickness” and on occasions “on behalf of other people who are experiencing life hardships . . . as well as to pay thanks in case of recover from sickness, having success in life, or special blessings.” [REDACTED] indicates that Ardas may be for a large group of people or the beneficiary may be required to travel to a home, hospital or business. [REDACTED] further states that when the beneficiary is not engaged in these activities, “he will be involved in the study of Gurbani (scriptures) as well as engaging in varied meditations on behalf of our community.”

[REDACTED] stated that on Tuesday through Thursday, the beneficiary will perform evening scriptures from 6:30 pm to 7:00 pm, and that from 7:00 pm to 8:30 pm, he will meet with congregation members, either on or off site “to perform any one of a number of prayers depending on the specific occasion.” [REDACTED] further stated:

On Friday, [the beneficiary] will only be assisting congregants from 6:30 p.m. to 7:00 p.m. before performing Paath Rehras Sahib (evening prayers), Kirtan, Paath Sohila Sahib from 7:00 p.m. to 8:30 p.m. On Saturday, Paath Sukhmani Sahib, Naam Simran, Paath Sohila Sahib will be carried out by [the beneficiary] from 6:30 p.m. to 8:30 p.m. which, at that time, will also include special Sukhasan prayers on this specific evening.

On Sunday, [the beneficiary] will attend to congregants from 6:30 p.m. to 7:00 p.m. and again from 7:30 p.m. while heading prayers 7:00 p.m. to 7:30 p.m. Moreover, on Sundays only, he will prepare children’s lessons very early in the morning from 6:00 a.m. to 7:00 a.m. with which he will then be involved from 2:30 p.m. to 5:00 p.m. on that day. Regarding these teachings, [the beneficiary] will be required to provide instrumental and vocal training to our children so that they might become more familiar with Kirtans, Gurbanis, (scriptures from Sikh Holy Book), interpretations of the Sikh Holy book and proper Punjabi pronunciations of the prayers.

We find that the petitioner has provided sufficient documentation of the nature of the beneficiary’s work and of the beneficiary’s work schedule to establish he will work in a religious vocation or occupation for at least 20 hours per week

The director also found a discrepancy in the number of priests that the petitioner stated were in its employ. On the Form I-129, Petition for a Nonimmigrant Worker, dated April 15, 2009, the petitioner stated that it had five employees that it identified as general maintenance and four priests, not including the beneficiary of this petition. In his April 6, 2009 letter, [REDACTED] stated that the petitioner sought the beneficiary’s services “to augment our staff of three other full-time Priests who have long been established at this Gurdwara.” Referring to the petitioner’s statement

on the Form I-129 that it had a membership of 700 to 800 and [REDACTED] letter indicating that the petitioner had a membership of approximately 1,000, the director, citing *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988), questioned the credibility of the petitioner's evidence.

On appeal, the petitioner states that it has five priests including its head priest and sometimes refers to the individuals as four priests and the head priest. It further states that it has relatively few paid members and a regular attendance of about 150. It also states that attendance at Sunday services may swell to 800 and on other religious occasions to as many as 1,000. The petitioner did not explain why, if it had five priests and a maintenance person, it reported having only five paid employees.

Nonetheless, the AAO does not find this discrepancy of import significant enough to deny the beneficiary's eligibility for R-1 status. An onsite inspection of the petitioner's premises conducted by an immigration officer on April 3, 2008 confirms that the petitioner operates in its claimed capacity. Accordingly, we find that the petitioner has met its burden of proof and we sustain the appeal.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

ORDER: The appeal is sustained.