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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 and Immigration Services

C1

[redacted]

DATE: DEC 28 2011 OFFICE: CALIFORNIA SERVICE CENTER [redacted]

IN RE: Petitioner:
Beneficiary: [redacted]

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:

[redacted]

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,

Mari Johnson

Perry Rhew
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.

In this decision, the term "prior counsel" shall refer to who represented the petitioner at the time the petitioner filed the petition. The term "counsel" shall refer to the present attorney of record.

The petitioner is a temple of the , a Hindu denomination also known as the movement. 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 brahmana (priest). The director determined that an investigation had discredited some of the documentation submitted in support of the petition.

On appeal, the petitioner submits a brief from counsel and various statements and exhibits.

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 petitioner filed the Form I-360 petition on May 27, 2008. The petitioner indicated that the beneficiary entered the United States on June 8, 2006, less than two years before the petition's filing date. Therefore, some of the beneficiary's qualifying experience would have taken place outside the United States.

In a joint letter accompanying the initial submission, the petitioner's director, and the petitioner's president, stated:

> [The beneficiary] has worked in the religious vocation of a Hindu minister of religion for since 1990. He served full time at the India . . . prior to coming to the United States in June 2006 to serve as a Hindu priest at the temple in

An April 12, 2006 letter from reads, in part:

> I am a member of the Governing Body Commission and am responsible for Eastern India as well as other places and an Initiating Guru for world-wide.
>
> This is to certify that [the beneficiary] has been serving as a full time member in . . . [H]e was ordained as a priest on 24th March, 1997.
>
> . . . is inviting him to their temple.

The regulation at 8 C.F.R. § 204.5(m)(12) reads, in part:

> 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. . . . 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.

On December 14, 2009, the director advised the petitioner of the director's intent to deny the petition, based on information obtained during efforts to verify the petitioner's claims. The director stated:

> On March 28, 2007, [USCIS] received an overseas wire from the Consulate General of the United States in Kolkata India. A field investigation was conducted to verify the

> beneficiary's religious work in India at the [sic] Temple in The consulate found evidence that the was not associated with the [sic] Temple in The Temple letterhead lists a number and address that does not exist.

From the wording of the director's notice (and the wording of the aforementioned cable), it is not clear which temple's "letterhead lists a number and address that does not exist."

The record does not contain a copy of any March 2007 cable from the consulate in Kolkata. A March 28, 2007 electronic mail message (not a cable) from a consulate official referred to a then-ongoing investigation, but mentioned no temples There is also an excerpt from April 2007 cable from the embassy in New Delhi, referring to findings by the consulate in Kolkata. The embassy cable contains the correct spelling of The cable does not specify the allegedly nonexistent address. The cable does not contain any specific information (such as the beneficiary's name or the petitioner's address) to link this particular petition to the findings in the cable. The cable's vague and general reference to "an [sic] temple does not presumptively discredit every petition filed from The materials in the record of proceeding do not show that the petitioner's claimed address "does not exist."

With respect to this specific petitioner, located on a compliance review report indicates that a USCIS officer "conducted a site visit on June 26, 2007. The petitioner exists and is functioning as a Krishna Consciousness temple." USCIS has, therefore, verified the existence of the

The director instructed the petitioner to "[s]ubmit original documentation from an affiliated temple in India to verify the beneficiary's original status is valid" and "an explanation as to the invalid documents originally submitted in support of the beneficiary's R-1 status in June of 2006."

In response, the petitioner submitted copies of letters previously submitted in support of the Form I-360 petition and an earlier nonimmigrant visa application. Prior counsel observed that the petitioner had never claimed "any connection whatsoever between the beneficiary and the A copy of an publication shows that there is also a temple in ("Krsna" is an alternate spelling of "Krishna"). Prior counsel asserted that the beneficiary worked at the not the similarly-named temple in Prior counsel protested that the director intended to deny the petition "on the basis of information that is completely inapplicable to the beneficiary."

The director denied the petition on March 4, 2010. In the denial notice, the director stated that the petitioner "submitted another copy of a letter from . . . It is this letter that the embassy [sic] in Kolkata India has determined is without merit and does not establish the beneficiary's religious experience." The excerpt from the embassy's cable does not identify refers only to "the" a temple that is not named anywhere in had mentioned an unnamed temple in

but the materials submitted by the petitioner show that there is another temple in that is affiliated with the petitioner

On appeal, the petitioner submits declarations and other documents attesting to the beneficiary's prior experience at Counsel repeats the claim that the embassy cable contains irrelevant information that does not warrant denial of the petition.

Upon review of the record of proceeding and the investigative materials presented, the AAO finds that the director has not established that the information in the embassy cable relates to the present petition. That cable contains vague and ambiguous assertions that may conceivably relate to the petitioner and to the beneficiary, but then again may not. If more specific evidence exists, it is not part of the record of proceeding. The materials presented thus far show specific conclusions arising from general evidence, with no persuasive link between the two. The AAO will therefore withdraw the director's finding in this regard. Because that finding was the only stated ground for denial, the AAO will also withdraw the denial decision as a whole.

The director may not deny the petition based on inferences or conclusions that the record does not support. Observations contained in an investigative report that are conclusory, speculative, equivocal, or irrelevant do not provide good and sufficient cause for the issuance of a notice of intent to revoke the approval of a visa petition and cannot serve as the basis for revocation. *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988). By the same logic, these factors are also not adequate grounds for denial.

If further evidence exists that specifically links this petition to disqualifying findings, the director must add that evidence to the record of proceeding and issue a new decision, describing that evidence in specific detail rather than simply concluding that the evidence discredits the petitioner's claims.

At the same time, the AAO notes a number of deficiencies and potential disqualifying factors that the director has not yet addressed and which preclude approval of the petition. The AAO may address these factors even if the director did not list them among 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 (9th 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 most significant issue concerns the beneficiary's past nonimmigrant status. As noted previously, the USCIS regulation at 8 C.F.R. § 204.5(m)(4) requires that, if the beneficiary earned any qualifying experience in the United States, then the beneficiary must have gained that experience in lawful immigration status. Likewise, the USCIS regulation at 8 C.F.R. § 204.5(m)(11) requires that qualifying prior experience, if acquired in the United States, must have been authorized under United States immigration law.

The record shows that the beneficiary earned his experience in the United States under R-1 nonimmigrant religious worker status. An alien in R-1 status may be employed only by the religious organization through whom the status was obtained. 8 C.F.R. § 274a.12(b)(16). An R-1

nonimmigrant may not be compensated for work for any religious organization other than the one for which a petition has been approved or the alien will be out of status. *See* 8 C.F.R. § 214.2(r)(13). More generally, the USCIS regulation at 8 C.F.R. § 214.1(e) provides 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.

Correspondence from the petitioner, dated January 31, 2007, acknowledged and quoted the regulation then in effect at 8 C.F.R. § 214.2(r)(6), which stated, in part: "Any unauthorized change to a new religious organizational unit will constitute a failure to maintain status." Subsequent revisions replaced the quoted regulation with similar language at 8 C.F.R. § 214.2(r)(13).

The beneficiary entered the United States on June 8, 2006, with an R-1 nonimmigrant visa that permitted him to work at "[redacted]" and nowhere else. On February 26, 2007, the petitioner had filed a Form I-129 nonimmigrant petition (receipt number [redacted] seeking to employ the beneficiary in [redacted]. USCIS records show that the nonimmigrant petition was still pending when the petitioner filed the present special immigrant petition, and that the director denied the nonimmigrant petition on January 28, 2010. Therefore, USCIS never authorized the beneficiary to work for the petitioner in [redacted]

Although USCIS never authorized the beneficiary to move from [redacted], the beneficiary made the change anyway. Officials of the temples in [redacted] agree that the beneficiary moved [redacted] in October 2006, several months before the [redacted] temple even attempted to seek permission for the change. The beneficiary has, therefore, been in violation of his R-1 status since October 2006, when he changed employers without authorization.

The beneficiary's change of employment appears to be a facially disqualifying factor under 8 C.F.R. §§ 204.5(m)(4) and (11). Any future decision by the director must take this into account.

Also, the regulation at 8 C.F.R. § 204.5(m)(7) requires the petitioner to submit a detailed attestation regarding the petitioner, the beneficiary, and the job offer. The regulation at 8 C.F.R. § 204.5(m)(10) requires the petitioner to submit documentation (including Internal Revenue Service documentation, if available) to show how the petitioner intends to compensate the beneficiary. At this time, the record lacks the evidence that these cited regulations require. Unless remedied, these deficiencies amount to additional grounds for denial of the petition.

Therefore, the AAO will remand this matter for a new decision. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

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.