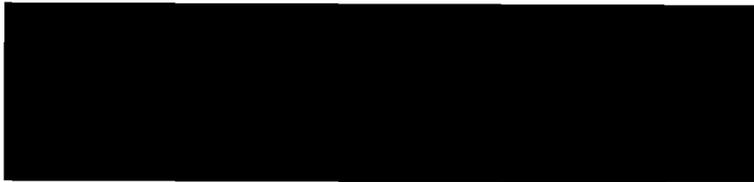


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



C1

FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

FEB 24 2011

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:



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,

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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 dismiss the appeal.

The petitioner is a non-profit builder and renovator of Hindu temples and other religious structures.¹ 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 religious sculptor. The director determined that the petitioner had not established that the beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits witness letters and copies of the beneficiary's visa documentation.

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).

¹ We note that several documents in the record, including the Form I-360 petition, spell the first word of the petitioner's name as '██████████'. For the cover page of this decision, we have used the spelling '██████████' which appears on the petitioner's organizational documents such as its articles of incorporation.

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 USCIS regulation at 8 C.F.R. § 204.5(m)(11) reads:

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 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.

The petitioner filed the Form I-360 petition on October 1, 2008. The beneficiary entered the United States as an R-1 nonimmigrant religious worker on various occasions between October 3, 2003 and May 17, 2007. The beneficiary's R-1 nonimmigrant status allowed him to work at the [REDACTED]. Any employment by another United States employer, religious or otherwise, would amount to a violation of status. The regulation at 8 C.F.R. § 274a.12(b)(16) allows an R-1 nonimmigrant to work only for the religious organization that obtained R-1 status for the alien. More generally, under 8 C.F.R. § 214.1(e) a nonimmigrant may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status.

The petitioner's initial submission included an "Experience Certificate" from [REDACTED], who stated that the beneficiary obtained "experience in temple works during [REDACTED]"

the period from 1995-2001.” The petitioner did not submit any employment materials relating to the 2006-2008 qualifying period.

On January 28, 2009, the director instructed the petitioner to submit evidence of the beneficiary’s relevant past employment and compensation. The director specifically requested copies of the beneficiary’s income tax documentation from 2006 and 2007, and letters from prior employers. In response, counsel stated: “There is [sic] no 2006 & 2007 W-2 forms for the beneficiary since he did not work for a US employer.” Counsel claimed that the beneficiary’s admission as an R-1 nonimmigrant religious worker is, itself, evidence of qualifying experience. This claim fails because the beneficiary’s visa and entry documentation only show when, and for what purpose, USCIS admitted him into the United States. The documentation is not proof of the beneficiary’s activities before or after that date. The beneficiary’s admission as an R-1 nonimmigrant authorized him to perform qualifying religious work, but it does not show that he subsequently performed such work.

██████████ vice president of the petitioning entity, stated:

The religious sculptors . . . have been employees of labour contract companies from INDIA and as such have not been directly employed in the US by the ██████████ for which they do sculpting. As is common with their trade they are not paid at the locations where they are deputed to work. Instead their families . . . directly collect the money from the parent companies overseas. [The petitioner] . . . intends to change this mode of operation by directly employing the religious sculptors subject to US employment, taxation and immigration laws.

The petitioner did not claim to have employed the beneficiary previously. In a separate attestation, Dr. ██████████ stated that the petitioner “does not currently have employees. It is a new start-up organization.” ██████████ also stated: “The beneficiary has worked as a religious sculptor for the last two years immediately preceding the filing of the application as shown by documents attached elsewhere in this package.” The only accompanying document to mention the beneficiary’s experience during the statutory period is another letter from ██████████, dated September 28, 2008, offering the beneficiary the position described in the petition. In that letter, ██████████ stated: “I am impressed with . . . your work in the U.S. and India for the last two years.” This letter offers no useful information about the beneficiary’s past work, or how ██████████ knew about it.

Counsel claimed: “The beneficiary was paid through his previous employer from India at about the equivalent of \$800 per month.” The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner did not submit any evidence of this claimed compensation, or even identify the “previous employer [in] India.”

The director denied the petition on June 15, 2009, stating “the evidence is insufficient to establish that the beneficiary has been performing full-time work as a Religious Worker for at least the two-year period immediately preceding the filing of the petition in lawful immigration status.” The

director added that the petitioner had not shown that the beneficiary held lawful nonimmigrant status throughout the entire two-year qualifying period.

On appeal, counsel asserts that the beneficiary “was in legal but non-immigrant status whenever he was or is in the U.S., i.e., from September, 2003 onward,” returning to India for job-related training “from October 10, 2006 to May 15, 2007.” Counsel states that the beneficiary “was sculpting at the Madrid, Iowa temple from July 1, 2005 to February 28, 2009 but he was employed by [REDACTED] a business based in India, for that whole period” (emphasis in original).

We note that the beneficiary’s initial admission entry as an R-1 nonimmigrant on October 6, 2003 allowed him to work lawfully in the United States only for three years. *See* 8 C.F.R. § 214.2(r)(4) (2003). In October 2006, the beneficiary’s initial period of stay expired, and the beneficiary indeed left the United States at that time. Subsequently, the beneficiary could not properly re-enter the United States as an R-1 nonimmigrant without a renewed or extended R-1 nonimmigrant visa. The record, however, does not show any such renewal or extension. Instead, it appears that USCIS mistakenly readmitted the beneficiary for another three years on October 17, 2007, based on the same R-1 nonimmigrant visa from 2003. USCIS had no authority to do so, because the beneficiary had already used up his allotted three year initial admission.

On appeal, the petitioner submits new letters from [REDACTED] writing this time as an official of the construction committee of the [REDACTED] of Iowa, and from [REDACTED] stating that the beneficiary worked at the above temple under contract for [REDACTED] Bangalore, India, from July 1, 2005 to February 28, 2009. A new “Experience Certificate” from [REDACTED] indicates that the beneficiary undertook “[REDACTED]” “under me from 10.10.2006 to May 15.05.2007.”

The regulations require the petitioner to submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The 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).

Where, as here, the director has previously given the petitioner an opportunity to address a specific deficiency in the record, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *see also Matter of Obaighena*, 19 I&N Dec. 533, 537 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director’s request for evidence. *Id.* The AAO need not and will not consider the sufficiency of the evidence submitted on appeal.

Even if the newly submitted materials were equivalent to IRS documentation of wages paid, which they are not, the petitioner did not submit these materials when the director specifically requested letters and documentation to show the beneficiary’s past qualifying employment. The petitioner’s failure to submit

required evidence upon request is, itself, sufficient basis for denial of the petition, and the petitioner cannot retroactively remedy that failure by submitting materials that the petitioner should have submitted earlier.

For the reasons discussed above, we find that the director correctly found that the petitioner's response to the request for evidence did not include required evidence of the beneficiary's past employment. The director properly denied the petition based on the evidence available at the time, and the petitioner, on appeal, has not shown that the director should have approved the petition based on that same evidence.

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 not met that burden. Accordingly, the AAO will dismiss the appeal.

ORDER: The appeal is dismissed.