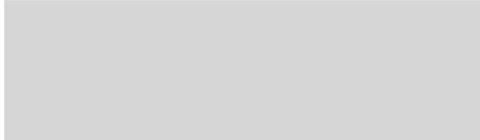




U.S. Citizenship  
and Immigration  
Services

(b)(6)



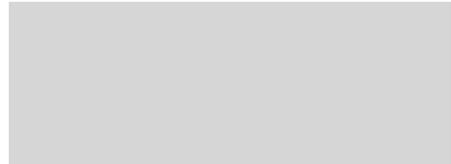
DATE: JUL 17 2015

FILE#: [REDACTED]  
PETITION RECEIPT#: [REDACTED]

IN RE: Petitioner: [REDACTED]  
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:



INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

Ron Rosenberg  
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. We will withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, we will remand the petition for further action and consideration.

The petitioner is a Hindu temple. 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 priest. The director determined that the petitioner had not submitted required evidence to establish that it qualifies as a bona fide nonprofit religious organization or a bona fide organization which is affiliated with the denomination.

On appeal, the petitioner submits a brief and additional evidence.

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 alien must be coming to work for a bona fide non-profit religious organization in the United States, or a bona fide organization which 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 the 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
- (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 Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) on March 24, 2014. Accompanying the Form I-360, the petitioner submitted a June 7, 2009, letter from the IRS, granting the petitioner tax-exempt status under section 501(c)(3) of the Internal Revenue Code (IRC), and classifying the petitioner as a public charity under section 509(a)(2). The petitioner submitted documentation relating to its religious nature and purpose. The Religious Denomination Certification portion of the Form I-360 was left blank with the exception of the petitioner's name.

In response to a request for evidence (RFE) from the director, the petitioner submitted a May 27, 2014, letter from the IRS, confirming the petitioner's tax-exemption under section 501(c)(3), and its classification as a public charity under section 509(a)(2) of the IRC. The petitioner also submitted brochures and flyers related to its observance of religious festivals.

The director denied the petition on August 25, 2014. The director stated that, because the IRS classified the petitioner under section 509(a)(2) of the IRC rather than under a section pertaining specifically to religious organizations, such as 170(b)(1)(A)(i), the petitioner must meet the regulatory requirements listed at 8 C.F.R. § 204.5(m)(8)(iii) to establish that it qualifies as an organization that is affiliated with the religious denomination. The director stated that the petitioner met requirements (A), (B), and (C) under that regulation, but had not submitted a completed Religious Denomination Certification as required under (D).

In a brief submitted on appeal, the petitioner states 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. Further, on May 13, 2015, the petitioner submitted an April 28, 2015, letter from the IRS stating that the petitioner meets the requirements for classification under section 170(b)(1)(A)(i) of the IRC, which pertains to churches and related organizations.

The submitted evidence establishes that the petitioner 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 must therefore withdraw the director's decision.

At the same time, other disqualifying factors prevent the approval of the petition. Because we review the record on a *de novo* basis, we may identify additional grounds for denial beyond what the Service Center identified in the initial decision. See *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

## II. COMPENSATION

### A. Law

The regulation at 8 C.F.R. § 204.5(m)(10) states:

*Evidence relating to compensation.* Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS [U.S. Citizenship and Immigration Services]. If IRS documentation, such as IRS Form W-2 [Wage and Tax Statement] or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

### B. Analysis

On the Form I-360, the petitioner indicated that the beneficiary would receive prospective compensation of \$1,000 per month salary, plus room and board. The petitioner indicated in an accompanying letter that it has employed the beneficiary in the proffered position for more than two years prior to filing, and that it "has been offering" the same compensation described on the Form I-360. The petitioner submitted evidence that the beneficiary entered the United States on March 13, 2012, in R-1 nonimmigrant status authorizing his employment with the petitioner.

The petitioner submitted an uncertified copy of its Return of Organization Exempt from Income Tax (IRS Form 990), for 2012, which reported \$729,482 in net assets for the year. The petitioner also submitted copies of the beneficiary's IRS Forms W-2 for 2011, 2012, and 2013, listing wages from the petitioner of \$2,163.23, \$7,468.69, and \$11,405.52, respectively.

While the submitted IRS Form 990 tax return indicated that the petitioner had sufficient funds to provide the proffered compensation, the form is uncertified and there is no evidence in the record to

indicate that the form was filed with the IRS. The petitioner did not submit documentary evidence to support the figures asserted on the return. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Further, the submitted IRS Forms W-2 do not support the petitioner's assertion that it has been providing salaried compensation of \$1,000 per month. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). As the IRS Forms W-2 reflect wages less than the proffered salary, they are insufficient, on their own, to establish how the petitioner intends to provide the proffered salary.

In addition, while we note that the beneficiary's address on the Form I-360 matches that of the petitioner, the petitioner did not provide further details or documentary evidence about how it intends to provide the proffered non-salaried compensation of room and board.

### III. QUALIFYING EXPERIENCE

#### A. Law

The 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 continuously for at least the two-year period immediately preceding the filing of the petition. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work throughout the two-year period immediately preceding March 24, 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. Analysis

As stated previously, the petitioner indicated in a letter accompanying the Form I-360 that it employed the beneficiary throughout the two years immediately prior to filing. While the petitioner submitted copies of the beneficiary's IRS Forms W-2 for the years 2012 and 2013, it has not submitted any documentary evidence of the beneficiary's employment during the portion of 2014 which preceded the filing of the Form I-360. Statements made without supporting documentary evidence are of limited probative value and are not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Accordingly, the record does not establish that the beneficiary has the requisite two years of continuous, qualifying work experience.

#### IV. CONCLUSION

As discussed above, the petitioner has overcome the stated basis for the denial decision, but the petition is being remanded for the director to consider whether the petitioner has established how it intends to compensate the beneficiary and that the beneficiary has the required qualifying experience.

The matter will be remanded for a new decision. The director may request any additional evidence deemed warranted and should allow the petitioner to submit supplementary evidence in support of its position within a reasonable period of time. 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).

**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.