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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

File: WAC-01-218-50634 Office: California Service Center Date: JUN 05 2003

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: 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:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Acting Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is described as a Sikh religious organization. It seeks classification of the beneficiary as a special immigrant minister pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), in order to employ her as a "full time religious worker."

The acting director denied the petition finding that the petitioner failed to establish that the beneficiary has been performing full-time work as a religious worker for the two-year period immediately preceding the filing of the petition.

On appeal, the petitioner's secretary submits a letter in rebuttal to the director's findings.

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 October 1, 2003, 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 October 1, 2003, 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 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 beneficiary in this matter is described as a native and citizen of India who was last admitted to the United States on November 14, 2000, as a B-2 visitor. She seeks special immigrant classification as a religious worker. The petitioner did not provide a description of the size of its membership or the number of employees.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

The petitioner must establish that the beneficiary had had the requisite two years of continuous experience in a religious occupation.

Regulations at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that:

> All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on June 22, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least June 23, 1999.

In this case, the petitioner submitted a letter dated November 10, 2000, from a named, but otherwise unidentified individual, representing a Sikh temple in Bahrain. The letter stated, in pertinent part, that:

> This letter is to verify that [the beneficiary] has worked for our organization from 1998 until November 2000 in the capacity of Religious Teacher [sic].
>
> Her salary [was] approximately $1,500.00 per month as it would translate into U.S. Dollars. She was employed full time, forty hours per week. Her job duties included, but not limited to: teaching the doctrines of the Sikh religion to the local congregation and the introduction of the religious faith to the children. She also instructed people who sought conversion to the faith. In addition, she prepared and delivered sermons on the history and rituals of the Sikh religion to the children and minors in Sunday school.

No evidence of earnings such as pay stubs, tax records or bank statements for the beneficiary's employment with the Bahrain Temple is contained in the record.

In a letter dated January 3, 2001, the secretary of the petitioning U.S. entity stated, in pertinent part, that:

> This letter is to verify that [the beneficiary] is [sic] a Volunteer Worker for our Temple since November 26, 2000 until the present time [sic].
>
> She does not have a set schedule, but does her volunteer work primarily in the mornings. Her compensation is approximately #300.00 per month and in addition she receives food and lodging.

The secretary of the U.S. temple submitted an additional letter dated April 30, 2001, stating, in pertinent part, that:

> [The beneficiary] has also been working for the International Bhai Kanhaiya Jee Niskam Sewa Society in the position of a religious worker since her arrival in the United States. Her job duties will include the following: Will conduct religious worship and perform other spiritual functions associated with beliefs and practices of the Sikh religious faith. Will provide spiritual and moral guidance and assistance to the gurudwara (Sikh temple or church) member's children. Will lead minor members of the Sikh congregation in the worship services. Will chant and read the verses from the Holy Book Guru Granth Sahib. Will prepare and deliver sermons on the history and rituals of the Sikh religion to the children and minors in Sunday school. Will interpret the doctrines of the Sikh religion. Will preach the doctrines and the history of the Sikh religion and the preachings of different gurus to the congregation and members of the Gurudwara. Will instruct people who seek conversion to the faith. Will visit sick and shut-ins, and help [the] poor. Will counsel those in spiritual need and comfort the bereaved. Will oversee religious education programs. Will write articles for community publication and engage in interfaith community, civic, educational, and recreational activities sponsored by or related to interest of denomination [sic].

On appeal, the secretary of the petitioner states that the beneficiary's previous "volunteer" employment was full-time not part-time, with her work being "primarily" in the morning. The secretary further states that the beneficiary has been supported by her employment, not her family as claimed by the director.

The statute and its implementing regulations require that a beneficiary had been continuously carrying on the religious occupation specified in the petition for the two years preceding the filing of the petition. The regulations are silent on the question of volunteer work satisfying the requirement. The

pertinent regulations were drafted in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they may not be salaried in the conventional sense and may not follow a conventional work schedule. The regulations distinguish religious vocations from lay religious occupations. 8 C.F.R. § 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. While such persons are not employed *per se* in the conventional sense of salaried employment, they are fully financially supported and maintained by their religious institution and are answerable to that institution. The regulation defines a lay religious occupation, in contrast, in general terms as an activity related to a "traditional religious function." *Id.* Such lay persons are employed in the conventional sense of salaried employment. The regulations recognize this distinction by requiring that in order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of salaried employment and will not be dependent on supplemental employment. *See* 8 C.F.R. § 204.5(m)(4). Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, the Service interprets its own regulations to require that, in cases of lay persons seeking to engage in a religious occupation, the prior experience must have been full-time salaried employment in order to qualify as well.

In this case, the beneficiary has served as a teacher of Sikh doctrine to children and minors in Sunday school in Bahrain and primarily as a "volunteer" Sunday school teacher and instructor of youth "prisoners" in her current position. However, the teaching of Sunday school as well as other part-time voluntary service to one's church is not considered engaging in a religious occupation for the purpose of special immigrant classification. For this reason, it must be concluded that the petitioner has failed to overcome the grounds for denial of the visa petition.

Beyond the decision of the acting director, a petitioner also must demonstrate its ability to pay the proffered wage. The petitioner has not furnished the church's annual reports, federal tax returns, or audited financial statements. Therefore, the petitioner has not satisfied the documentary requirement of this provision. Additionally, the petitioner also must demonstrate that a qualifying job offer has been tendered, that the beneficiary qualifies as a religious worker, and that the position qualifies as a religious occupation. Further, as the appeal will be dismissed on the grounds discussed, these issues need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.