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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
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Washington, D.C. 20536

[redacted]

File: WAC 01 132 55061 Office: CALIFORNIA SERVICE CENTER Date: SEP - 2 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]

PUBLIC COPY

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a Hindu temple. It seeks classification of 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) in order to employ her as a cantor.

The acting director denied the petition, finding that the petitioner failed to establish that the beneficiary had been continuously carrying on a full-time salaried religious occupation for the two-year period immediately preceding the filing date of the petition.

On appeal, counsel asserts that there is no requirement in the statute or the regulations that an alien's two years of qualifying experience in the religious occupation must have been in the form of full-time salaried employment.

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).

Pursuant to 8 C.F.R. § 204.5(m)(1):

> 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 March 13, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing as a full-time salaried cantor since at least March 13, 1999.

On appeal, counsel submits the text of the testimony of John Brennan, a visa officer with the Foreign Service, United States Department of State, and Thomas E. Cook, former Acting Assistant Commissioner for Adjudications, Immigration & Naturalization Service (now the Bureau) before the House Judiciary Committee, Subcommittee on Immigration and Claims, regarding the nonimmigrant and immigrant religious worker visa programs. Both Mr. Brennan and Mr. Cook recommended modifications in the regulatory language concerning such visas. Nevertheless, the legislative history of the religious worker provision of the Immigration Act of 1990 reflects that a substantial amount of case law has developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision. *See* H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA, 1980).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that

he/she would be required to earn a living by obtaining other employment. M*atter of Bisulca*, 10 I&N Dec. 612 (Reg Com. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg Com 1963.

In line with these past decisions and the intent of Congress, it is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and salaried. To find otherwise would be outside the intent of Congress.

In this case, the petitioner states that the beneficiary served as a full-time cantor at the Shri Sanatan Dharam Vedic Prem Sabha Temple in New Delhi, India from March 1994 to January 1999 and subsequently as a cantor at the petitioning temple from January 1999 to the date of filing of the petition. The petitioning temple's President, B. U. Patel, stated in a letter that accompanied the initial I-360 petition:

> As a religious worker in India, Mr. [redacted] was working full-time in our religious membership programs. Along with other devotees he was preaching to persons in from [sic] a Hindu background and also visited offices and stores owned or managed by persons of Hindu descent and invited persons in such facilities to visit our temples regularly and join our membership programs. As an accomplished religious singer, he would lead the group religious chanting not only at the temple, but also at home engagements, along with other devotees.
>
> We are requesting that you grant Mr. [redacted] permanent residency as a religious worker so that he may stay here in temple. He will continue here with full-time work as a cantor along with membership activities to the persons of Hindu background residing in this area.
>
> Mr. [redacted] will not be dependent on supplemental employment or solicitation of funds for support. After he is granted permanent residency our organization will give him no salary but will supply all of his necessities including housing, food and clothing and such remuneration shall be in exchange for Mr. Anand's religious services rendered.

The petitioner's president clearly stated that the beneficiary

would be supplied with housing, food and clothing, but no salary. The petitioner's 1999 Form 990 Return for Organization Exempt From Income Tax confirms this statement. This document reflects that several individuals serve the temple as officers on a voluntary basis, but the petitioning temple does not report any salaried employees.

For the reasons discussed above, such service does not constitute continuous experience in a religious occupation. The Bureau is, therefore, unable to conclude that the beneficiary had been engaged in a full-time salaried religious occupation during the two-year qualifying period. For this reason, the petition may not be approved.

Further, while the determination of an individual's status or duties within a religious organization is not under the Bureau's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with the Bureau. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

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.