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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
425 Eye Street N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, D.C. 20536

[redacted]

File: [redacted] Office: VERMONT SERVICE CENTER Date: SEP 16 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: SELF-REPRESENTED

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a Buddhist temple that 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 serve as a monk and assistant abbot.

The director denied the petition, finding that the petitioner failed to establish that it was a qualifying tax exempt organization, that the beneficiary had been continuously carrying on the religious vocation for the two-year period immediately preceding the filing date of the petition, and that the temple had demonstrated the ability to pay a qualifying wage.

On appeal the Vice President of Lao Lane Xang Temple of Connecticut, submits a statement 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,
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> (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
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> (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 record shows that the petitioning Buddhist temple was established in 1993. The beneficiary, a native and citizen of Myanmar, is a Buddhist monk who first entered the United States on March 27, 2001 as a nonimmigrant B-2 visitor for pleasure, with stay authorized to September 26, 2001. The beneficiary's authorized stay had not expired as of the filing date of the petition, and the record contains no indication that the beneficiary has engaged in unauthorized employment since his arrival in the United States.

Pursuant to 8 C.F.R. § 204.5(m)(3), each petition for a religious worker must be accompanied by:

> (ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:
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> * * *
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> (C) That, if the alien is a religious professional, he or she has at least a United States baccalaureate or its foreign equivalent required for entry into the religious profession. In all professional cases, an official academic record showing that the alien has the required degree must be submitted.
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> (D) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother, or that the type of work to be done relates to a traditional religious function.

On appeal, the petitioner's vice president states that the beneficiary serves the temple as a Buddhist monk and assistant abbot in excess of 40 hours per week. The vice president describes the beneficiary's duties as preaching and teaching the Buddhist doctrine; performing religious ceremonies (weddings, festivals, funerals); educating and counseling worshippers; conducting religious ceremonies on holy days; visiting the sick and dying; performing all Buddhist rituals; and conducting Vipassana meditation on a daily basis. He also indicates that the beneficiary, as a Buddhist monk, has taken a vow of poverty and does not receive wages for his religious services, nor is the beneficiary allowed to solicit donations. The petitioner's vice president also states that the temple provides the beneficiary with room and board, medical care, transportation, equipment, and a stipend to cover all necessary expenses.

The record contains a copy of the beneficiary's religious

registration record book with English translation. According to this document, the beneficiary was ordained as a novice monk on March 21, 1976 at the age of twelve at Pikakabhasapyan Temple, Pang Long, Shan State, Myanmar. The beneficiary received higher ordination as a Buddhist monk at Sasanamandaing Temple, Begu, Myanmar, on May 23, 1986 at the age of 21.

The first issue to be addressed in this proceeding is whether the beneficiary's employer is a tax-exempt religious organization.

The director determined the petitioner had not shown that it is a non-profit religious organization that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code.

The petitioner's vice president states that the petitioner has been designated by the Internal Revenue Service as a non-profit religious organization that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code.

Pursuant to 8 C.F.R. 204.5(m)(3), each petition for a religious worker must be accompanied by:

> (i) Evidence that the organization qualifies as a nonprofit organization in the form of either:
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> (A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations; or
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> (B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3).

In this case, the record contains a notice from the Internal Revenue Service dated October 24, 1996, informing the Lao Lane Xang Temple of Connecticut that it has been determined to be exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. Therefore, this portion of the director's objections has been overcome.

The second issue to be addressed in this proceeding is whether the petitioner has shown that it has the ability to support the beneficiary financially.

On appeal, the petitioner's vice president states that the beneficiary, as a Buddhist monk, has taken a vow of poverty and does not receive wages for his religious services, nor is he allowed to solicit donations. The petitioner's vice president also states that the temple provides the beneficiary with room and board and pays for all necessary expenses. In support of his statement, the petitioner's vice president submitted the temple's

2001 federal income tax return for organizations exempt from federal income tax.

The record establishes that the beneficiary is a Buddhist monk performing services in a religious vocation. As a Buddhist monk, the beneficiary is not a salaried employee of the temple, nor does he solicit donations. Further, the record sufficiently establishes that the temple provides the beneficiary with room and board and pays for all necessary expenses. Since the beneficiary is not a salaried employee, the temple is not required to show that it has the ability to pay the beneficiary a salary, but rather that the beneficiary will not be dependent on supplemental employment or solicitation of funds for support. After review of the evidence of record, it is concluded the petitioner has submitted sufficient evidence to show that it has the ability to support the beneficiary financially, and that the beneficiary will not be dependent on supplemental employment or solicitation of funds for support. The director's objection on this issue has been overcome.

The final issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary had the requisite two years of continuous experience in the religious vocation as of the filing date of the petition.

On appeal, the petitioner's vice president states the beneficiary is an ordained Buddhist monk who had been performing the full-time duties of a religious vocation for more than two years prior to the filing date of the petition.

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 July 31, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing in the religious vocation since at least July 31, 1999.

The record contains a letter from Venerable Sihanadalankara of the Makutarama Myanmar Buddhist Temple stating that the beneficiary served that temple as chief monk and abbot from July 28, 1998 to March 20, 2001. The petitioner's vice president states in a letter dated July 24, 2001 that Lao Lane Xang Buddhist Temple invited the beneficiary to serve as assistant abbot and that the beneficiary has served Lao Lane Xang Temple in that capacity since March 22, 2001. That statement is corroborated by the following consular notation on the beneficiary's nonimmigrant visitor's visa: "Buddhist monk

resident Sri Lanka since 1993 to visit Lao Lane Xang Buddhist Temple." In review of the record, it is determined that the petitioner has submitted sufficient evidence to show that the beneficiary had been continuously carrying on a religious vocation for two years immediately preceding the filing date of the petition. The petitioner has overcome all the objections of the director, and the petition may be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained.