U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

C1

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: NOV 03 2004

IN RE: Petitioner: [redacted]
Beneficiary:

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 of the Administrative Appeals Office 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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The self-petitioner seeks classification 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 failed to establish that the organization with which he was associated qualified as a bona fide nonprofit religious organization.

On appeal, counsel submits a brief and copies of previously submitted 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 October 1, 2008, 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, 2008, 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).

The regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

> (3) *Initial evidence.* Unless otherwise specified, 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:
>
> (A) Documentation showing that it is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

The documentation indicates that the petitioner's proposed employment is as a priest/Brahma Kumar and director of the Brahma Kumaris World Spiritual University sub center in Austin, Texas.

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code (IRC) of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, if applicable, and a copy of the organizing instrument of the organization which contains a proper dissolution clause and which specifies the purposes of the organization.

With the petition, the petitioner submitted a copy of a 1980 letter from the IRS granting the [redacted] with a mailing address in San Antonio, Texas, tax exempt status under section 501(c) of the IRC as an organization described in section 170(b)(1)(A)(vi) of the IRC. A 1988 letter from the IRS acknowledges the [redacted] Centre's change of name to the [redacted] World Spiritual Organization (BKWSO) with a mailing address in Los Angeles, California. The petitioner also submitted a copy of a certification dated November 27, 1988 and signed by the secretary of the BKWSO, reporting the board's approval of the name change.

In response to the director's Notice of Intent to Deny (NOID) dated March 19, 2003, the petitioner submitted a statement from [redacted] who is identified by counsel as the director of the Texas BKWSO. According to [redacted] the petitioner is the "Center [redacted] -in-charge" of the BKWSO Austin, Texas branch. Nothing in the record establishes the relationship of the petitioner's proposed employer to the BKWSO or that the proposed employer is covered under a group tax exemption issued to the BKWSO by the IRS.

Assuming, however, that a relationship between the petitioner's prospective employer and the BKWSO can be established, the petitioner has failed to establish that the organization is exempt from taxation as a religious organization as required by the regulation. The petitioner submitted a copy of the BKWSO bylaws dated 1984 and a copy of the Certificate of Restated Articles of Incorporation issued by the Texas Secretary of State. While the bylaws state the purpose of the organization, they do not contain the dissolution clause required by the IRS for section 501(c)(3) status.

Counsel asserts on appeal, as she did in response to the NOID, that the BKWSO chose to be classified by the IRS under section 170(b)(1)(A)(vi) of the IRC for philosophical reasons. Counsel asserts that the BKWSO meets the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B); however, counsel failed to submit the documentation required by the regulation. Counsel did not submit a copy of a completed IRS Form 1023 or a copy of the organization's bylaws or articles of incorporation containing a proper dissolution clause.

The evidence is insufficient to establish that the petitioner's prospective employer is a bona fide nonprofit religious organization, exempt from taxation as required by the statute and regulation.

On appeal, counsel asserts that CIS has approved previous visa preference petitions for religious workers by the petitioner. The director's decision does not indicate whether she reviewed the prior approvals of the other

immigrant petitions. If the previous immigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved previous immigrant petitions filed by the petitioner, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

According to the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, the beneficiary entered the United States in July 1996 on the basis of an approved H-1B petition for a nonimmigrant worker in a specialty occupation. The director stated that it could not be determined that the beneficiary's sole purpose in entering the United States was to work for the petitioner. The regulation does not require that the alien's initial entry into the United States to be solely for the purpose of performing work as a religious worker. "Entry," for purposes of this classification, would include any entry under the immigrant visa granted under this category or would include the alien's adjustment of status to the immigrant visa. We withdraw this statement by the director.

However, beyond the decision of the director, the evidence does not establish that the petitioner seeks to enter the United States solely for the purpose of carrying on the vocation of a minister.

On appeal, counsel asserts that the statute does not preclude the alien from engaging in other work if the religious organization is capable of providing the alien with full time employment, and the alien is not dependent upon secular employment for financial support. Counsel cites *Matter of Z-*, 5 I&N Dec. 700 (Comm. 1954) to support this proposition.

Counsel's reliance on *Matter of Z-* is unfounded. The alien in *Matter of Z-* was a Catholic priest who was admitted to the United States for a year to pursue theological studies. With appropriate extensions, he remained in the United States for approximately two years. The former Immigration and Naturalization Service (now Citizenship and Immigration Services) denied his application for a nonquota immigrant visa because he had not been continuously working in his vocation for the two years immediately preceding his application. The Board of Immigration Appeals (BIA) held that, where the beneficiary was an ordained priest, the fact that he has engaged in a course of study in furtherance of his vocation does not mean that he has abandoned his vocation as a minister. The BIA found that the petitioner was required by his denomination to celebrate mass, dispense the sacraments and guide the spiritual lives of those he served. Thus he was still practicing his religion and was not engaging in activity inconsistent with the vocation of a minister while pursuing further education.

The petitioner in the present case is not an ordained minister pursuing further education. The petitioner works full time, and plans to continue to work full time, in a secular employment position for a nonreligious organization. While the statute does not impose similar limitations on those working in other religious activities, it clearly

requires that the alien who seeks to enter the United States as a minister must do so solely for the purpose of pursuing the vocation of minister.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

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).

A letter from IBM dated April 7, 2003, indicates that the petitioner has been employed full time as a software engineer with IBM since January 2000, and in 2003, earned a salary of over $6,600 per month. Counsel asserts that the petitioner's religious denomination encourages outside employment for its priests. Nonetheless, such outside employment is inconsistent with the requirements of the statute and regulation.

For similar reasons, the petitioner has also not established that he has been continuously engaged in religious employment for two full years prior to the filing of the visa petition. 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 immediate preceding two years. The petition was filed on July 25, 2001. Therefore the petitioner must establish that he was continuously working as a religious worker throughout the two-year period immediately preceding that date.

The petitioner submitted copies of his 1999 Form W-2, Wage and Tax Statement issued by the University of Texas at Austin, reflecting that he was paid approximately $11,160 in salary. The petitioner also submitted his Form W-2s from IBM for 2000 and 2001, reflecting salary paid of approximately $67,044 and $73,644. This evidences that the petitioner was not continuously employed in a religious vocation or occupation for the two years immediately preceding the filing of his visa petition.

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 sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.