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Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[Redacted]

File: EAC 01 230 60693 Office: VERMONT SERVICE CENTER

Date: **AUG 06 2003**

IN RE: Petitioner: [Redacted]
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

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.

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Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a religious organization. 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), to perform services as a "religious teacher." The director determined that the petitioner had not extended a valid job offer.

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

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

The issue raised by the director is whether the petitioner had received a valid job offer. 8 C.F.R. § 204.5(m)(4) requires that each petition for a religious worker must be accompanied by a qualifying job offer from an authorized official of the religious organization at which the alien will be employed in the United States. The official must state the terms of payment for services or other remuneration. In addition, 8 C.F.R. § 204.5(g)(2) requires that the employing religious organization submit documentation to establish that it has had the ability to pay the alien the proffered wage since the filing date of the petition. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

On the Form I-360, Petition for Amerasian, Widow or Special Immigrant, the petitioner had indicated that no other applications or petitions had been filed.

In his decision, the director stated:

According to our records, your organization has filed a minimum of 140 petitions offering permanent full-time employment to religious workers, all of whom seem to be in the United States illegally, all of whom would work 3:00 PM to 11:00 PM....A 400-family mosque with a minimum of 140 religious teachers seems most remarkable to us.

The petitioner stated that the beneficiary would receive a remuneration of \$200 a month, or \$10,400 a year, with unemployment insurance benefits.

In a letter dated April 28, 2001, the petitioner stated that the beneficiary had not been placed on the petitioner's payroll, as he had no social security number, but that the organization had been

paying him \$200 in cash per week since his employment on January 15, 1999. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The Internal Revenue Service (IRS) Forms 990, Return of Organization Exempt from Income Tax, submitted by the petitioner, indicate that the petitioner employed 40 "professional teachers" in 1997, 1998, and 1999, who were paid a total of \$148,172, \$541,527, and \$568,385.68, respectively, during those years. The 2000 IRS Form 990 indicates 40 teachers were paid \$829,751 during that year. The petitioner also submitted IRS Forms W-2, Wage and Tax Statements, for 2000, for a total of 40 employees; the salaries for these 40 employees, however, total \$488,400 paid, and not \$829,751, as indicated on the other IRS submission for that same year. The petitioner's 2001 IRS Form 990 indicates payments of \$1,816,738, but fails to indicate the number of employees.

In another document, the petitioner stated that, because of the needs of the Muslim community, its organization required the hiring of more teachers "according to its locality." The petitioner indicated that there are about 400 families in the organizational membership and that it employs 37 individuals. The petitioner asserted that the parents donate funds to the organization and that the organization, in turn, pays the salaries of the religious teachers.

The petitioner also submitted affidavits from three families that state that the beneficiary has instructed their [total of] 13 children since January 15, 1999, in their residences in Corona, Sunnyside, and Long Island City, New York.

On appeal, the petitioner reiterates much of the information already provided. The petitioner also states that its yearly revenue rose from \$24,900 in 1995 to almost two million dollars in 2001. The petitioner asserts that it is fulfilling the Islamic educational requirements of the Muslim community in the State of New York through the aid of its learned religious teachers. The petitioner adds that although the beneficiary is "apparently" illegally in the United States since 1992, the children benefit from continuing with the same teacher and will suffer if he is now required to stop teaching them. The petitioner also provides the beneficiary's reasons for wishing to remain in the United States.

The petitioner states that the religious teachers go from house to house to teach the students assigned to them and that this system is practical, economical, and of benefit to the parents. The petitioner also explains that the religious workers do not teach the same children from 3 to 11 p.m. each day, but alternate schedules, teaching each group for 2 hours and 20 minutes and moving from location to location until the last group of children, scheduled for study from 8:40 until 11:00 p.m., receives

instruction. The remainder of the beneficiary's time is then spent traveling from location to location.

The petitioner states that it currently employs 45 individuals, but that at least 150 petitions have been filed. The petitioner then asserts that it now employs "about 150 beneficiaries." It is noted that IRS Forms W-2 are for only 40 employees, with five duplicate forms submitted. The petitioner also states that some of the beneficiaries do not have social security numbers and cannot be put on the payroll, but that the organization has been paying them in cash only for the last two years.

Also submitted in the record on appeal is the beneficiary's affidavit attesting to the fact that he has worked for the petitioner for the requisite time and has been paid in cash only.

The petitioner has not adequately established that the needs of the petitioning entity will provide permanent, full-time religious work for the beneficiary in the future. The petitioner has not demonstrated that it has extended a valid job offer to the beneficiary, or established its ability to pay the beneficiary the proffered wage. For these reasons, the petition may not be approved.

Another issue that will be discussed is whether the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing date of the petition.

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).

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

Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or 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. 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 April 30, 2001. Therefore, the petitioner must establish that the beneficiary was working continuously as a religious worker from April 30, 1999 until April 30, 2001. The petitioner indicated that the beneficiary last entered the United States on an unspecified date in November 1992, but failed to complete the Form I-360 as it pertained to the beneficiary's status in the United States. The petitioner also has failed to complete Part 4 of the Form I-360 by neglecting to state whether the beneficiary has worked in the United States without permission.

The petitioner stated that it wished to employ the beneficiary in a permanent position of "Islamic teacher" to teach children and adults how to recite the Quran and the wordings of prayers in Arabic. The petitioner stated that, based on the community's needs, these professional religious teachers also teach in the mosque. The petitioner also stated:

Funerals and Eid prayers [sic]. The children/adults are also taught about fasting, basic knowledge of

Islamic history, Names of Allah and obeying the Prophet Muhammad.

The petitioner stated that the Muslim community contacts its organization for professional religious teachers, which are then supplied to them through the petitioner. The petitioner also stated that the beneficiary has been a member of its organization for two years. The petitioner asserted that the beneficiary has been teaching a particular group of children since January 15, 1999, and has submitted affidavits from the parents of these children. The petitioner stated that the beneficiary works 40 hours a week, Monday through Friday, from 3:00 p.m. to 11:00 p.m.

Although the record does list some duties of the beneficiary, it does not provide a comprehensive description of the beneficiary's activities during the two-year period immediately preceding the filing date of the petition. The unsupported assertions contained in the record do not adequately establish that the beneficiary was continuously performing the duties of a qualifying religious vocation or occupation throughout the two-year period immediately preceding the filing date of the petition. The record contains insufficient evidence to establish either that the beneficiary was paid wages by the petitioning organization throughout the two years immediately preceding the filing date of the petition, or that the work performed was on other than a volunteer basis.

Another issue not raised by the director in his decision is that 8 C.F.R. § 204.5(m)(3)(ii) requires a petitioner for a special immigrant religious worker to show that the alien is qualified in the religious occupation. A petitioner must establish that the beneficiary is qualified as defined in these proceedings. 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that 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:

- A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.
- B) That, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested.

- 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; or
- 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.

In a letter dated April 28, 2001, the petitioner stated that the beneficiary is one of its "professional religious teachers." The petitioner also stated that "some" of its members are professional, educated, and qualified religious teachers. Regarding the beneficiary's qualifications, the petitioner stated:

He graduated [sic] the Quranic recitation from Qadar Al-uloom School, Central Jamea Masjid Khoshab, Pakistan. He has six years experience as a religious teacher in Jameet-ul-Quran Gujranwala, Pakistan. He obtained a Bsachelor [sic] of Arts degree from [U]niversity of Punjab, Pakistan. Certificates of his qualifications and experience are enclosed....

The petitioner indicated that the position of a religious teacher required the following: a certificate of recitation of the Quran in Arabic from any school; knowledge of Arabic "wordings of prayers by heart" and how to properly recite the prayers; knowledge of the ritual performance of funeral prayers and services; knowledge of the prophets and angels; and, a belief in the Quran, the Hadees, the Torah, the Injeel, and the Zaboor.

The petitioner asserted that the beneficiary qualifies under these requirements in that he is already teaching the children and adults and has performed the duties of the religious teaching for over eight years. The petitioner also stated that the beneficiary is a "minister in [the] Muslim faith" and that he also can lead the prayers as an "Imam" when required.

Included in the record is a certified translation of a document from the president of the school where the beneficiary studied the Holy Quran since February 15, 1969, beginning at eight years of age with no date of termination listed. Also included in the record is an affidavit dated September 28, 1992, stating that the beneficiary served as an Islamic teacher in a "Madressa" from

September 4, 1984 to October 8, 1990. Also included in the record is a copy of a document from the University of Punjab indicating that the beneficiary received a Bachelor of Arts degree in April 1990.

The petitioner has not demonstrated that its position of "religious teacher" is a qualifying religious vocation or occupation, since those duties identified indicate that this position consists of activities normally expected of an active member of a religious organization rather than a position that would be filled by a salaried employee who completed training in preparation for a career in religious work. Further, the record fails to reflect that the training obtained by the beneficiary qualifies him to assume the position of a religious worker for the petitioner. The beneficiary has not been shown to be qualified to engage in a religious vocation or occupation.

Discrepancies encountered in the evidence presented are called into question in the petitioner's ability to document the requirements under the statute and regulations. The discrepancies in the petitioner's submissions have not been explained satisfactorily. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988).

In reviewing an immigrant visa petition, the Bureau must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

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.