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U.S. Department of Homeland Security
Citizenship and Immigration Services

CI

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536

[REDACTED]

File: LIN 01 245 50513

Office: NEBRASKA SERVICE CENTER

Date: **DEC 09 2003**

INRE: 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 Citizenship and Immigration Services (CIS) 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.

Cindy M. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner 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 an "Imam." The director determined that the petitioner had not established that it qualifies as a bona fide nonprofit religious organization.

On appeal, counsel timely submitted the Form I-290B, Notice of Appeal, and requested 75 days in order to submit additional evidence from the Internal Revenue Service (IRS). The additional evidence was timely received, and the record is considered complete.

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

The sole issue raised by the director to be addressed in this proceeding, is whether the petitioner has established that it qualifies as a bona fide nonprofit religious organization.

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).

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 August 17, 2001. Therefore, the petitioner must establish that the beneficiary was engaged continuously as a religious worker from August 17, 1999 until August 17, 2001. The petitioner indicated on the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, that the beneficiary last entered the United States on February 26, 2001, and that the beneficiary's status as an R-1, non-immigrant religious worker, was valid until February 8, 2002. On Part 4 of the Form I-360, the petitioner indicated that the beneficiary had not worked in the United States without permission.

The regulation at 8 C.F.R. § 204.5(m) 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* [emphasis added] (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 organizations...

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), such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations may be submitted. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement which applies to churches, and a copy of the organizing instrument of the church which contains a proper dissolution clause and which specifies the purposes of the organization.

The record contains a copy of the IRS letter dated February 12, 2002, granting the petitioner, the Islamic Community of the Bosniaks in Washington, tax-exempt status under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). The IRS letter further states:

Because you are a newly created organization, we are not now making a final determination of your foundation

status under section 509(a) of the Code. However, we have determined that you can reasonably expect to be a publicly supported organization described in section 509(a)(2). Accordingly, during an advance ruling period you will be treated as a publicly supported organization, and not as a private foundation.

The IRS letter indicates the advance ruling period began on December 26, 2000 and will end on December 31, 2004. The initial application also included the IRS Form 872-C, Consent Fixing Period of Limitation Upon Assessment of Tax Under Section 4940 of the Internal Revenue Code. This form indicates it is to be filed "Under section 6501(c)(4) of the Internal Revenue Code, and as part of a request filed with Form 1023 that the organization named below be treated as a publicly supported organization under section 170(b)(1)(A)(vi) or section 509(a)(2) during an advance ruling period."

The director found that the evidence submitted did not establish that the petitioner was a bona fide religious organization as recognized by the IRS.

On appeal, counsel asserted that it had already complied with the regulatory requirements and stated that: "the documentation previously filed, relating to the religious activities of the petitioner, constitute the type of documentation required by the Internal Revenue Service to establish eligibility for exemption under Section 501(c)(3) of the Internal Revenue Code." Counsel then requested additional time to permit the IRS to reclassify the petitioner as a religious organization.

On appeal, the petitioner submitted a "Supplementary Explanation" dated September 22, 2002, requesting that the IRS reclassify the organization under section 509(a)(1) and section 170(b)(1)(A)(i). The petitioner stated:

To clarify further, [the petitioner] is first and foremost a religious organization. Its mandate is to provide religious services to its congregation and community. These services include worship, regularly scheduled congregational prayer, and other spiritual and ritual ceremonies. The organization provides wedding services, services at funerals and services of initiation at birth into the faith. The organization also provides a number of religious ceremonies each year. Among these are religious ceremonies during the month of Ramadan and

on various other ceremonial days during the year. The organization also conducts religious instruction for children in the congregation. The instruction constitutes religious learning in a traditional manner.

On appeal, the petitioner submitted an IRS Form 1023, revised in Part I and Part III, denoting that the organization is a "church," and a Schedule A, pertaining to churches.

The petitioner also submitted its Articles of Incorporation, filed with the State of Washington on December 26, 2000, effective date January 1, 2001, and an amendment filed with the State of Washington on May 11, 2001, containing a proper dissolution clause and an expanded statement of the purposes of the petitioning organization. The record also includes "Appendix VI: Organizing Bylaws of Islamic Community of Bosniaks in Washington, Inc.," which is not dated and contains a different dissolution clause. It is unclear which dissolution clause takes precedence.

On December 10, 2002, counsel submitted a new letter from the IRS dated November 27, 2002. Counsel asserts that: "The change of the exempt status to that applicable to a religious organization documents that the petitioner has been classifiable as a religious organization in the past, and that it has now been classified as such."

The IRS letter of November 27, 2002, states that: "The changes indicated do not adversely affect your exempt status and the exemption letter issued to you continues in effect." The enclosure from the IRS indicates that the petitioner's "Foundation Classification" is changed from section 170(b)(1)(A)(vi) to section 170(b)(1)(A)(i).

It is noted that as of November 27, 2002, the IRS recognized the petitioner's foundation classification as that relating to a religious organization. It is significant, however, that the petitioner did not apply for recognition as a tax exempt organization under section 501(c)(3) until seven days prior to the filing of this petition on behalf of the beneficiary. On the "Supplementary Explanation," pertaining to the request to reclassify the petitioning organization, the petitioner states:

The Islamic Community of Bosniaks in Washington applied for tax-exempt status with the IRS on 8/10/2001. In February 2002, the IRS determined the organization as exempt from federal income tax [sic]...

The statement of the petitioner makes clear that the petitioning organization did not seek bona fide nonprofit status until seven days prior to filing this petition, and six months after the beneficiary was stated to have begun working for the petitioner in February 2001.

The record, in this case, indicates that the proposed employer was not recognized as a bona fide nonprofit organization exempt from federal tax as a *religious organization* until approximately fifteen months following the filing date of this petition. Counsel asserts that the change of IRS recognition as a tax-exempt organization under section 170(B)(1)(A)(i), indicates "that the petitioner has been classifiable as a religious organization in the past, and that it has now been classified as such." It is noted, however, that the initial classification by the IRS of the petitioner as exempt from federal income tax occurred with the IRS' initial letter of February 12, 2002, which falls approximately six months after the filing of this petition and approximately one year after the beneficiary was said to have begun working for the petitioner. Thus, the petitioner has not shown that it has met the requirements under 8 C.F.R. § 204.5(m)(1) which state, in pertinent part, that this 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.* [emphasis added]"

In the alternative, the petitioner could have submitted documentation that would have complied with the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B). It is noted that the amendment containing a proper dissolution clause was not filed until May 2001, while the IRS Form 1023 and Schedule A, pertaining to churches, were not submitted until September 2002. Therefore, the regulatory requirements of this provision also were not met prior to the filing of this petition. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). In this case, the petitioner has not established that it qualified as a bona fide nonprofit religious organization at the time this petition was filed. Therefore, the petition must be denied for this reason.

Beyond the decision of the director, it appears that the petitioner did not submit sufficient evidence to 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 requisite two-year period for this petition runs from August 17, 1999 until August 17, 2001.

In a declaration dated July 23, 2001, the petitioner stated:

From May 1, 1997 to February 26, 2001 [the beneficiary] performed the duties of an Imam in a mosque placed at Aneks, within the Islamic community of Sarajevo in Bosnia. From February 26, 2001 to the present time the beneficiary has been employed by the petitioner in R-1 status on a full-time basis performing the duties of an Imam as previously described.

The record, however, contains a partial copy of the beneficiary's passport issued by the government of Bosnia and Herzegovina on "02.10.2000." Page 9 of the passport contains a United States R-1, non-immigrant religious worker visa, issued on October 31, 2000, valid until October 29, 2001. The visa bears the annotation "Islamic Cultural Center, Chicago, 45 days." The passport bears an entry stamp on November 22, 2000, at Seattle, Washington. The passport reflects return, via Heathrow Airport, London, England, on January 10, 2001, and Zagreb, Croatia, on January 11, 2001. The passport also contains a stamp for Sarajevo, Bosnia and Herzegovina, on February 26, 2001. Page 17 of the passport contains a second United States R-1 visa issued February 9, 2001, valid until February 8, 2002, bearing the annotation of this petitioner's name. The attached Form I-94, Arrival and Departure Card, bears the handwritten notations "R-1," and "Feb. 25, 2002," although the port of entry stamp is not visible on the copy. CIS databases reflect that the beneficiary entered the United States at Seattle, Washington, on February 26, 2001.

In this case, the record does not include any materials from the Islamic Center in Chicago or reflect that the beneficiary performed any religious activities and duties since November 22, 2000, while outside Aneks, Sarajevo, where he was said to be engaged as a full-time Imam. It is noted that this period of over three months from November 22, 2000 until February 26, 2001, falls during the requisite timeframe in which the beneficiary must have been continuously engaged as a religious worker. It also is noted that a mere showing that the beneficiary has been in the United States in nonimmigrant R-1 status does not adequately establish that he was continuously engaged in a qualifying religious vocation or

occupation for the two-year period immediately preceding the filing date of this petition.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and 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, 591-92 (BIA 1988). On appeal, petitioner has apparently not recognized nor addressed the inconsistent issues discussed above.

It is also noted that the petitioner provided a list of the duties of the proffered position, and stated that the beneficiary has performed these duties in the past. The duties are described as:

... conducting religious services, performing baptisms (christenings), marriages, burials, preaching, teaching a congregation, communion or its equivalent, and performing benedictions, visitations, research, and consultations.

In a letter dated May 18, 2001, the "Office of Bosniaks Diaspora and Haj," ruled by Rijaset Islamic Community in Bosnia and Herzegovina, confirmed that the beneficiary "performed the duties of an Imam" from May 1, 1997 until February 26, 2001. The letter does not discuss the beneficiary's hours in performance of various functions, his remuneration, or precise duties. This is significant because 18 months of the requisite two-year period occurs while the beneficiary was engaged as an Imam in Bosnia. It is also noted that the translation of the "Certificate of completed education for profession Imam, Hatib and Muallim," given by the Ghazi-Husrev-bey's Medressa, Sarajevo, is issued to "Polovina Admir." The record does not reflect the use of this name for the beneficiary on any other documents.

For the remainder of the requisite two-year period, the petitioner states that the beneficiary's duties for its organization in the United States, are the same as those performed by the beneficiary in Aneks, Sarajevo. On Schedule A, submitted with the IRS Form 1023, filed September 22, 2002, the petitioner indicates that, "The Imam devotes at least 40 hours each week to church work on behalf of the organization." The documentation indicates that congregational prayer services are held at three locations: Saturdays, beginning at 1:30 p.m.; and Sundays, beginning at 1:30

p.m., and 7:00 p.m. The duration of the services is not listed. The documentation indicates that special religious services called "Melvud" are held "periodically," and that the Imam performs other special religious services and functions. The documentation indicates that religious education is undertaken: Fridays from 7:00 p.m. - 9:30 p.m.; Saturdays from 10:00 a.m. - 2:00 p.m.; and Sundays from 10:00 a.m. - 3:30 p.m. and 4:00 p.m. - 7:00 p.m., for a total of fifteen hours a week. On the "Appendix I: Part II Activities and Operational Information" of the IRS Form 1023, the petitioner states the religious courses are "[o]rganized by paid employee/religious worker of the organization with the help of volunteer committees..." The information on Appendix I also states that the activities of the youth program will "be managed by paid employee of the organization."

While the petitioner has provided specific information about the operational activities of the organization, the record does not fully document the Imam's role in the various functions, and does not provide a breakdown of the hours he spends performing various functions as a minister, or in administration of the petitioner's programs, in support of the assertion that he is engaged on a full-time basis as an Imam. Pursuant to the earlier discussion, it is further noted that the beneficiary was performing duties as an Imam for the petitioner prior to its recognition as a bona fide non-profit organization.

For the reasons discussed above, the petitioner has not established 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.

Another issue not raised by the director to be addressed in this proceeding is whether the petitioner has established its ability to pay the beneficiary the proffered wage.

8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual

reports, federal tax returns, or audited financial statements.

In a declaration dated July 23, 2001, the petitioner stated:

Since entering the United States the beneficiary has been compensated at the rate of \$1,400 per month which includes direct payment by the petitioner of \$675 for rental of an apartment in which the beneficiary and his family reside, and a monthly payment of \$725 in cash... Attached to this declaration is an income statement as of June 30, 2001. The rent expenses therein pertain to the apartment rented by the petitioner for use by the beneficiary, and the wages related exclusively to the beneficiary.

The attached "Income Statement as of 6/30/01" is a single-page typed document that bears no evidence of having been audited. The document shows "rent expenses" at "\$1,250" and "wages expenses [sic]" at "\$1,470." It is noted that the petitioner stated the beneficiary came under its employ on February 26, 2001, and, therefore, by June 30, 2001 would have been engaged with the petitioner for a period of four months. At the rate of pay proffered in the initial declaration, after four months employment the beneficiary would have received \$2,700 in rent payments and \$2,900 in cash payments. The amounts indicated on the petitioner's Income Statement are not equal to the proffered wage. It is also noted that the record contains no documentary evidence other than the petitioner's statements to indicate that the beneficiary has been remunerated. 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 petitioner also submitted a single-page document, entitled "Islamic Community of the Bosniaks in Washington, Financial Statement From 1/01/2002. to 6/30/2002." There is no evidence that the document is an annual report or audited statement as required in the regulations. This document shows income of \$36,043.19, with expenses totaling \$31,074.28, including \$8,403.87 paid in "wages expenses," and a net income of \$4,968.91. It is noted that the amount paid for "wages expenses" would equal the proffered salary for this six-month timeframe, if the funds for the apartment rental and the cash payments are added together. The petitioner also submitted Basic Business Checking statements from US Bank, St. Paul, Minnesota, for the month of May 1 through May 31, 2001, and the two-month period of May 1, 2002 through June 30, 2002. On the

submitted IRS Form 1023, "Other salaries and wages" are reported as expenses totaling \$6,500 for the period of January 2001 until July 2001, and are projected at \$18,000 for FY 2001, \$21,000 for FY 2002 and \$25,000 for FY 2003. None of these amounts is equal to the annual proffered wage as stated by the petitioner.

While the petitioner has attempted to provide documentation of its ability to pay the proffered wage, it has not submitted annual reports, federal tax returns, or audited financial statements that would illustrate the assets and liabilities of its organization and permit a conclusive determination on its ability to pay the proffered wage in accordance with 8 C.F.R. § 204.5(g)(2).

It is further noted that the record warrants clarification as to whether the beneficiary received a qualifying job offer. 8 C.F.R. § 204.5(m)(4) states that each petition for a religious worker must be accompanied by a 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 how the alien "will be solely carrying on the vocation of a minister," and describe the terms of payment for services or other remuneration. The regulations state that the documentation "should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support."

The letters of the petitioner provide conflicting information concerning the job offer. The petitioner's declaration dated July 23, 2001, stated that the beneficiary has been compensated at the rate of \$1,400 per month. The information the petitioner provided on the revised IRS Form 1023, indicates that the Imam's compensation "is currently set to [sic] \$1,600 per month based on full-time employment." The record does not reflect an explanation for the change in salary that occurred in the period between the two documents. Moreover, the authorized officials of the religious denomination have not asserted that the beneficiary will be solely carrying on the vocation of a minister and will not be solely dependent on supplemental employment or solicitation of funds for support.

As the petition is not approvable on the ground discussed earlier, these additional issues need not be examined further.

The AAO notes that the dismissal of this appeal does not preclude the petitioner from filing a new special immigrant religious worker petition with all supporting documentation at the time that all the criteria are met.

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.