

PUBLIC COPY

CA

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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

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



File: [redacted] Office: VERMONT SERVICE CENTER Date: **DEC 23 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 [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.

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

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. 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), in order to employ her as a religious teacher at an annual salary of \$16,640.

The director determined that the petitioner had not established that the beneficiary had been continuously engaged in a religious vocation or occupation for the two-year period immediately preceding the filing date of the petition.

On appeal, counsel for the petitioner asserts that the director's denial of the petition is arbitrary, capricious, biased, and an abuse of discretion.

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 petitioner in this matter is described as an organization providing Islamic teaching of the Quran to children and adults in the Muslim community. On appeal, counsel states that the organization's membership has increased from 100 members in April 2001 to 250 members as of September 2002. On May 4, 1999, the petitioner was determined to be exempt from federal income tax under section 501(a) of the Internal Revenue Code (IRC), as a religious organization described in section 501(c)(3).

The beneficiary is a 35-year-old female, native and citizen of Pakistan, who initially entered the United States on November 7, 1992 in an unspecified manner. She subsequently departed the United States and returned in parole status on March 15, 1996. On January 13, 1997, the beneficiary's parole status was revoked and on July 20, 1998, she was ordered excluded and deported from the United States by an immigration judge.

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

At issue in this proceeding is whether the petitioner has established that the beneficiary had been continuously carrying on a religious occupation for the two years preceding the filing of the petition.

The regulations at 8 C.F.R. § 204.5(m)(1) state, in pertinent part, that:

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 continuously carrying on a religious occupation since at least April 30, 1999.

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. 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 or 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).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he or she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963); *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

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).

In line with these past decisions and the intent of Congress, it is clear 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 or 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 be otherwise would be outside the intent of Congress.

The petitioner asserts that the beneficiary has been employed as a full-time religious teacher since January 20, 1999. In support of this assertion, the petitioner has submitted uncertified copies of the beneficiary's Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statements, for 1999 through 2001, showing the beneficiary's wages from the petitioner as \$8,000, \$9,600 and \$10,400 for those years. The petitioner also submitted uncertified copies of IRS Forms 1040, U.S. Individual Income Tax Returns, for the beneficiary and her spouse, all of which had been amended because the beneficiary's "income from [the petitioner] was not properly recorded in the original."

The director noted that the petitioner had filed at least eight additional religious worker petitions on behalf of alien beneficiaries. The director also noted that the petitioner asserted that the beneficiary worked full-time, including eight-hour days on

Saturdays and Sundays, while being the parent of three young children. The director stated that he was "unsure what to make of the record" and concluded that the evidence submitted did not credibly establish that the beneficiary had been employed on a full-time basis as a religious worker for the two-year period immediately preceding the filing of the petition. The director also stated that he was not persuaded that the beneficiary would be employed on a full-time basis in the job offered.

On appeal, counsel asserts that it does not make sense to deny the petition based on the fact that the beneficiary has children. With regard to the additional religious worker petitions filed by the petitioner, counsel explains that a substantial number of children, including the children of non-members, require religious education and that it is not unusual to require at least eight teachers to teach over 80 students. The statements of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

We agree with counsel that the petitioner's status as a parent does not make it either implausible or impossible for her to have been employed by the petitioner on a full-time basis, however, the director merely made note of the beneficiary's circumstances in his decision, and did not state that the basis of the denial was predicated on these facts. However, the petitioner has not provided sufficient evidence to overcome the findings of the director. Therefore, we cannot conclude that the petitioner has overcome the director's concerns regarding the credibility of the documentation submitted regarding the beneficiary's claimed full-time salaried employment. Further, after a careful review of the record, it appears that the beneficiary is employed by the petitioner on a part-time contractual basis, not as a full-time salaried employee.

The beneficiary's IRS Forms W-2 do not indicate that any federal income tax was withheld by the petitioner, as would normally be withheld by an employer for a salaried employee. Also, the beneficiary's amended IRS Form 1040 tax returns include a Schedule C attachment, Profit Or Loss From Business (Sole Proprietorship), indicating that the beneficiary is self-employed. The petitioner claims substantial deductions for expenses relating to meetings and conventions, reference books and periodicals, photocopying, utilities, travel, meals and entertainment, advertising and legal and professional services. As a full-time salaried employee, many of these expenses would be provided by one's employer.

The record does not contain the petitioner's annual reports or audited financial statements. Although the petitioner has provided its IRS Form 990, Return of Organization Exempt From Income Tax, for the years 1999 through 2001, there is no information contained in the record to establish the total number of the petitioner's employees, including their names, titles, and salaries paid.

Furthermore, in a letter dated April 25, 2001, the petitioner,

stated that it intended, in the future, to pay the beneficiary \$16,400 annually, a substantial increase over the maximum compensation actually received by the beneficiary of \$10,400, as indicated on her 2001 IRS Form W-2. This raises further doubts as to whether the beneficiary's prior employment was, indeed, full-time.

Discrepancies encountered in the evidence presented pertain to the beneficiary's claimed full-time employment and call into question the petitioner's ability to document the requirements under the statute and regulations. These 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).

Based on the above discussion, it is concluded that the petitioner has failed to establish that the beneficiary had been engaged in a full-time salaried religious occupation for the two-year period immediately preceding the filing of the petition. Therefore, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not submitted sufficient documentation to establish that: the petitioner has had the ability to pay the beneficiary the proffered wage since the filing date of the petition; the beneficiary is qualified to engage in a religious vocation or occupation; and, the position offered by the petitioner is a qualifying religious vocation or occupation. Since the appeal will be dismissed for the reasons stated above, these issues need not be examined further in this proceeding.

In reviewing an immigrant visa petition, the AAO 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.