PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 Mass Ave. 3/F
Washington, D.C. 20536

[redacted]

SEP 04 2003

File: EAC 01 230 50899 Office: VERMONT SERVICE CENTER Date:

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

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.

Cindy N. Gomez for
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 The decision of the director will be withdrawn and the petition remanded for further action.

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 an "Islamic Teacher." In his decision, the director failed to articulate a specific reason for denial.

On appeal, the petitioner submitted a statement, an affidavit from the beneficiary stating that he has been paid to date, and copies of Internal Revenue Service (IRS) Form 990 tax documents for the years 1995 through 2001, showing increased revenue that the petitioner presents as evidence that it can hire more religious workers. The petitioner also resubmitted statements from families whose children the beneficiary is teaching.

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

> *Denial:* The denial of a petition for classification under section 203(b)(1), 203(b)(2), 203(b)(3), or 203(b)(4) of the Act (as it relates to special immigrants under section 101(a)(27)(C) of the Act) shall be appealable to the Associate Commissioner for Examinations. The petitioner shall be informed in plain language of the reasons for denial and of his or her right to appeal.

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 time when most schoolchildren are already asleep. A 400-family mosque with a minimum of 140 religious workers seems most remarkable to us. We simply do not find credible your claim that you would employ this beneficiary and at least 139 other

> beneficiaries, and perhaps hundreds of beneficiaries, on a full-time permanent basis as religious teachers.

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 February 13, 1998, but failed to complete the Form I-360, Petition for Amerasian, Widow or Special Immigrant, as it pertained to the beneficiary's status in the United States. Part 4 of the Form I-360 submitted by the petitioner, indicating whether the beneficiary has worked in the United States without permission, also has been left unanswered.

It is noted that the evidence included in the record does not meet the requirements of 8 C.F.R. § 204.5(m). Upon review of the record, the petitioner has not established that:

(1) 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;
(2) the beneficiary has received a qualifying job offer;
(3) it has had the ability to pay the beneficiary the proffered wage since the filing date of the petition;
(4) the beneficiary is qualified to engage in a religious vocation or occupation;
(5) the beneficiary's activities for the petitioner require any religious training or qualifications; and,
(6) the position offered is a qualifying religious vocation or occupation.

In view of the foregoing, the previous decision of the director will be withdrawn. The petition is remanded to the director for consideration and discussion of the issues identified above. The director may request any additional evidence he considers pertinent. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence,

the director will review the entire record and enter a new decision.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing. Entry of a new decision is to be certified to the Director of the Administrative Appeals Office for review.