



U.S. Citizenship
and Immigration
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FILE: [REDACTED]
WAC 03 163 52255

Office: CALIFORNIA SERVICE CENTER

Date: AUG 11 2005

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]

PUBLIC COPY

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

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a mosque. It seeks to classify 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 religious leader. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition or that the beneficiary was qualified for the position within the organization.

On appeal, submits additional documentation. Counsel indicated on the Form I-290B that a brief and/or additional evidence would be submitted within 30 days. As of the date of this decision, more than nine months after the appeal was filed, no further documentation has been received from counsel. However, the petitioner submitted a letter dated December 23, 2004.

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 first issue on appeal is whether the petitioner established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. 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 regulation indicates that the "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 regulation at 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.

The petition was filed on May 5, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a religious leader throughout the two-year period immediately preceding that date.

In its letter of April 15, 2003, the petitioner stated that the beneficiary had worked continuously as its religious leader since July 2001. In an August 25, 2003 letter, the petitioner stated that the beneficiary arrived in the United States pursuant to an R-1 nonimmigrant religious worker visa in April 2001. According to the petitioner:

After the formal training, [the beneficiary] began to work as a full-time religious leader leading the congregation during daily prayers, lectures to the congregation, gives spiritual and moral advice to members of our community, pastors our sick, teaches our children, provides religious instruction for adults & performs the rites and rituals as prescribed by Islamic law.

The petitioner stated that the beneficiary worked approximately 40½ hours per week, with additional hours and duties during the summer (for summer school) and during the month of Ramadan. The petitioner stated that the beneficiary was paid \$1,000 per month for her services, and submitted copies of checks that it made payable to the beneficiary. The petitioner did not submit checks for each of the months that it stated that the beneficiary worked for the petitioning organization and provided no evidence that these checks were ever presented for payment to the bank.

The petitioner also submitted copies of Form 1099-MISC, Miscellaneous Income, indicating that it paid the beneficiary \$12,000 in nonemployee compensation in 2001, 2002 and 2003. However, there is no evidence that the Forms 1099-MISC were ever filed with the Internal Revenue Service (IRS). Furthermore, the amount the petitioner reports that it paid to the beneficiary in 2001 exceeds the period of time for which she allegedly worked for the petitioning organization if the rate of pay was \$1,000 per month. The petitioner stated in its letter submitted on appeal that it advanced the beneficiary money for her trip to the United States, and that by mutual agreement between the parties, this money was deemed an advance of salary.

The petitioner submitted copies of the beneficiary's Form 1040, U.S. Individual Income Tax Return, for the years 2001, 2002 and 2003. We note that the beneficiary's year 2001 Form 1040, which was signed on August 7, 2002, indicates that she received \$5,000 in compensation. As with the Forms 1099-MISC, however, there is no indication that the beneficiary's income tax returns were ever filed with the IRS.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The petitioner also stated in its December 23, 2004 letter that, in addition to monetary compensation, it provided the beneficiary with full room and board after her arrival in the United States. However, the petitioner submitted no documentary evidence to substantiate this statement. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The petitioner stated in its letter of April 25, 2003, that the beneficiary also worked in Pakistan in a similar religious capacity for seven years. The petitioner submitted a copy of a January 17, 2000 letter from the International Rescue Committee in Peshawar, Pakistan, "certifying" that the beneficiary had worked as an "Islamiat" teacher in one of the organization's schools since 1997. The letter did not indicate the terms of employment for the beneficiary, and the petitioner submitted no evidence to substantiate the beneficiary's employment with the International Rescue Committee. *Id.*

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. 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/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/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *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, therefore, 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/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 generally salaried. To hold otherwise would be contrary to the intent of Congress.

On appeal, counsel submits a March 4, 2001 certificate from the [REDACTED] Pakistan, indicating that the beneficiary "has been working as an Islamic teacher in our school since 1997. The petitioner again did not submit documentary evidence, such as paychecks, pay vouchers, or verified work schedules to corroborate the beneficiary's employment. *See Matter of Soffici*, 22 I&N Dec. at 165. Additionally, the petitioner submitted no evidence that the duties performed by the beneficiary as a teacher in the Zarghuna Ana High School were similar to the duties of the proffered position.

The evidence is insufficient to establish that the beneficiary worked continuously as a religious leader for two full years prior to the filing of the visa petition.

The second issue on appeal is whether the petitioner established that the beneficiary was qualified for the position within the petitioning organization.

According to the petitioner:

The duties of the religious leader will be to oversee, plan and implement our religious educational programs for children, youths and adult women. This teacher will be in charge of teaching the Quran, religious studies and the Arabic language . . . She will provide offer training, counseling, tutoring to classes and individuals regarding Islamic laws, and prepare girls and boys for different celebrations and ceremonies. This religious leader will . . . report only to the Director of Islamic Education. This religious leader will also be involved in conducting and leading adults, women, and the children during religious services and in providing religious guidance for the preparation of the customary religious programs for major events.

The petitioner did not indicate that it required any special educational requirements for the position. In her cover letter accompanying the petitioner's response to the director's request for evidence dated August 8, 2003, counsel stated that the position of Moslem Religious Leader "does not require an official, specific university degree but does require experience, education and a religious vocation."

The director stated that, according to the U.S. Department of Labor's Occupational Outlook Handbook for 1998-1999, the position of Director, Religious Activities and Education, is a professional position requiring a least a bachelor's degree. The director determined that the petitioner had not submitted evidence to establish that the beneficiary had earned a bachelor's degree or its foreign equivalent.

We withdraw this determination by the director. The evidence does not establish that the proffered position is that of director of religious activities and education. In fact, the petitioner indicates that the beneficiary will report to the Director of Islamic Education. The evidence does not establish that the proffered position is that of a religious professional within the meaning of 8 C.F.R. § 204.5(m)(2).

Nonetheless, on appeal, counsel submits a copy of a 1998 certificate from the [REDACTED] granting the beneficiary a degree of Bachelor of Art in Islam.

The record sufficiently establishes that the beneficiary is qualified for the position within the organization.

Beyond the decision of the director, the petitioner has not established that it has the ability to pay the beneficiary the proffered wage.

The regulation at 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.

The petitioner stated that it will pay the beneficiary \$2,000 per month upon approval of this petition. As evidence of its ability to pay the proffered wage, the beneficiary submitted a copy of a Year 2002 Form 990, Return of Organization Exempt from Income Tax. The return reflects that the petitioner had net assets of \$298,535 for the year. However, there is no evidence that this return was ever filed with the IRS. The paid preparer signed the form on June 5, 2003, and the petitioner's president on June 21, 2003. The petitioner does not indicate that its fiscal year is on other than a calendar year basis. This return therefore has no evidentiary value.

The petitioner also submitted a copy of its 2002 balance sheet accompanied by an accountant's compilation report. As the compilation is based primarily on the representations of management, the accountant expressed no opinion as to whether they fairly present the financial position of the petitioning organization. In light of this, limited reliance can be placed on the validity of the facts presented in the financial statements that have been submitted. No further supporting documentation is included in the record to reflect the assertions made by the accountant in the financial documentation, or contained within the unaudited financial statements.

The above-cited regulation states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner has not established that the tax return it submitted is credible evidence of its financial status. Additionally, the petitioner submitted none of the other required types of primary evidence.

The evidence is insufficient to establish that the petitioner has the ability to pay the beneficiary a wage. This deficiency constitutes an additional ground for which the petition may not be approved.

Additionally, beyond the director's decision, the petitioner submitted copies of monthly checking account statements for December 2003, and January and February 2004. Although the petitioner's name appears on the statements, the statements reflect an address at [REDACTED]. The checks issued to the beneficiary by the petitioner on the same bank with the same account number indicate that the petitioner's address is [REDACTED] in Reseda, California. The petitioner submitted no evidence to explain the difference in the addresses. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and

sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Accordingly, based on the conflicting information, it is unclear where the petitioner is located, whether it is a bona fide organization and exists at all, whether the beneficiary is and has been working for the petitioner, and where the beneficiary is working. *Matter of Ho*, 19 I&N Dec. at 591. For this additional reason, the petition may not be approved.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.