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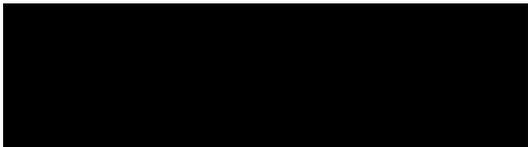
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
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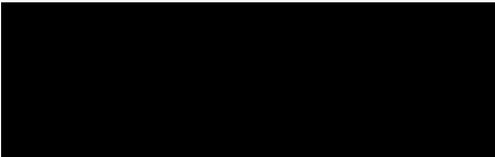
Date:

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

FEB 28 2005

PETITION: Immigrant 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:



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.

Robert P. Wiemann, Director  
Administrative Appeals Office

We are not persuaded that an individual claiming such expenses qualifies for classification as a special immigrant religious worker.

On appeal, the petitioner submits a letter from an accountant, indicating "the expenses claimed [on the tax returns] were found to be the ordinary and necessary expenses incurred [by the beneficiary] in the course of performing his religious duties for the religious organization. . . . The beneficiary is eligible to claim those expenses in the tax return as long as they are not reimbursed."

The grounds for denial are not clear from the director's notice of decision. Canceled checks and Forms 1099 amply establish the source of the beneficiary's 2001 and 2002 income, and the director does not suggest that the beneficiary's past income derived from non-qualifying activities. The director simply took issue with the volume of the beneficiary's claimed business expenses. Even if the amounts claimed were clearly suspicious, this would seem to be an issue of concern to the Internal Revenue Service (IRS) rather than an immigration matter.

Because the director has cited no clear, justifiable basis for denial, the director's decision cannot stand. Review of the record, however, reveals evidentiary deficiencies that must be remedied before the petition can be approved.

8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (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 section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

In the cover letter accompanying the initial filing, counsel notes that the petitioner's initial submission includes a "[c]opy of filing receipt for exemption from federal income tax . . . from the Internal Revenue Service, as evidence that the petitioner is exempt from taxation pursuant to 501(c)(3)." The cited receipt states, in pertinent part, "[w]e have received your application for exemption from Federal income tax." The letter indicates that the petitioner "may normally expect to hear from us within 120 days." The letter from the IRS is dated January 5, 2000, nearly three years before the petition's filing date, yet the record is devoid of direct evidence that the IRS approved the application for exemption. The petitioner has filed Forms 990, Return of Organization Exempt From Income Tax, for tax years ending in 2001 and 2002, but these returns are not *prima facie* evidence that the petitioner is recognized as a 501(c)(3) tax-exempt organization. Furthermore, tax-exempt organizations that are *not* religious organizations also file Form 990 returns, so the submission of the form does not establish the nature of the organization's purpose.

The director must give the petitioner a reasonable opportunity to satisfy either 8 C.F.R. § 204.5(m)(3)(i)(A) by submitting a copy of a determination letter from the IRS, or 8 C.F.R. § 204.5(m)(3)(i)(B) by submitting the following documentation as listed in Memorandum from William R. Yates, Associate Director of Operations, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003):

- (1) A properly completed IRS Form 1023;
- (2) A properly completed Schedule A supplement, if applicable;
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization;
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The other unresolved issue concerns the beneficiary's past employment. The regulation at 8 C.F.R. § 204.5(m)(1) 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." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on October 15, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a mufti throughout the two years immediately prior to that date.

In the cover letter accompanying the petition, counsel states "the beneficiary has been carrying on his religious vocation continuously since 1994 to the present," but the initial submission shows a significant gap. A certificate shows that the beneficiary stopped teaching at Madarasa Tahfeez ul Quran ul Kareem in Rawalpindi, Pakistan on October 15, 2000, only days after the two-year qualifying period began. The next documented employment began after the beneficiary arrived in the United States on August 26, 2001 and began working at Dar-Ul-Misbah. Thus, the initial submission does not show that the beneficiary was carrying on the vocation of a mufti between October 16, 2000 and August 25, 2001. The director's subsequent request for evidence did not mention this gap or afford the petitioner the opportunity to provide relevant evidence. Therefore, the record as it now stands does not show that the beneficiary *continuously* performed the duties of a mufti from October 2000 to October 2002.

The director has never notified the petitioner of the above deficiencies, and therefore the petitioner has not had the opportunity to address them. Pursuant to 8 C.F.R. § 103.2(b)(8), the director must allow the petitioner the opportunity to remedy the above deficiencies in the record before issuing a new decision.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.