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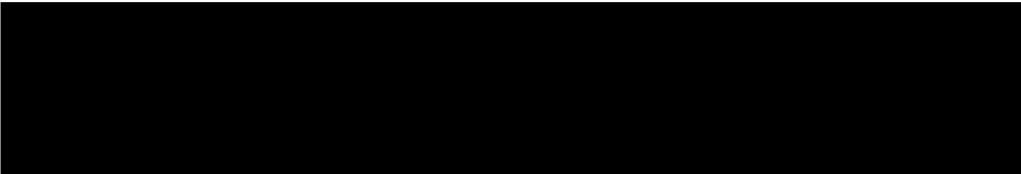
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FILE: WAC 05 134 52734 Office: CALIFORNIA SERVICE CENTER Date: JUN 14 2007

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

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.

Maura Deadrick
for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

Originally, the petitioner's sole attorney was [REDACTED], San Jose, California. On appeal, the petitioner submits a brief from [REDACTED] but the petitioner also submits a new Form G-28 Notice of Entry of Appearance as Attorney or Representative, naming [REDACTED] as the petitioner's attorney of record. Both attorneys participate in the appeal, and M [REDACTED] refers to herself as "co-counsel." The AAO, however, does not recognize joint or simultaneous representation of this kind. While we will give due consideration to arguments offered by [REDACTED] the most recent Form G-28, naming M [REDACTED] as the attorney of record, supersedes any prior G-28 relating to [REDACTED]. Therefore, in this decision, the term "prior counsel" shall refer to [REDACTED], and the term "counsel" shall refer to [REDACTED].

The petitioner is a mosque of the Shia Muslim denomination. 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 *aalim*, or head priest. The director determined that the petitioner had not established that (1) it had made a qualifying job offer to the beneficiary, (2) the beneficiary possesses the necessary qualifications for the position offered, (3) the beneficiary had the requisite two years of continuous work experience as an *aalim* immediately preceding the filing date of the petition, or (4) the beneficiary intends to work solely as an *aalim*. In addition, the director questioned the beneficiary's credibility.

On appeal, the petitioner's prior counsel requests oral argument. Apart from the fact that we can no longer recognize prior counsel as the petitioner's attorney, the regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, Citizenship and Immigration Services has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. See 8 C.F.R. § 103.3(b). In this instance, neither prior counsel nor counsel has identified any unique factors or issues of law to be resolved. The stated ground for the request for oral argument is that prior counsel is not clear on what the director requires to establish that the petition should be approved. The AAO hopes to resolve this ambiguity through the present remand order. Consequently, the request for oral argument is denied.

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).

First, we shall discuss the issue of the beneficiary's qualifications for the position of *aalim*. The petitioner has equated this position with that of a minister. 8 C.F.R. § 204.5(m)(ii)(B) requires the prospective employer to establish that the beneficiary has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested.

In an introductory letter submitted with the initial filing, [REDACTED] President of the petitioner's Board of Directors, stated that the beneficiary earned a doctoral degrees in Islamic Theology and Philosophy, and that he additionally holds lesser degrees in "Theology and Islamic Sciences." He did not, however, specify the nature of the credentials that authorize the beneficiary to perform the duties of clergy.

In a résumé submitted with the petition, the beneficiary did not expressly claim ministerial credentials. Rather, he identified himself as the petitioner's "Director of Religious Affairs," whose duties include "[p]roviding religious guidance to the [petitioner's] Board of Directors," "[c]onducting weekly Thursday night lectures, Friday programs and leading prayers at" the petitioning mosque, "[g]iv[ing] lectures and lead[ing] seminars on various Islamic topics," and "[s]upervis[ing] weekend Islamic school." The petitioner's newsletter from January 2004 refers to the beneficiary (under the surname "Abidi") as the petitioner's "resident Aalim."

On December 11, 2006, the director issued a request for evidence (RFE), informing the petitioner that the petition could not be approved without additional evidence and information. The RFE had an abbreviated response period, owing to the petitioner's request for expeditious handling of the matter. The director did not, at that time, request a certificate of ordination, nor did the 19-point RFE otherwise touch on the issue of the beneficiary's ordination or comparable authorization to perform the duties of clergy in his denomination. Nevertheless, when the director denied the petition on December 29, 2006, the director stated:

No ordination certificate or its counterpart in the Shia Islamic faith is in the record. The beneficiary's education and job experience reflect that he has worked as a businessman, a scholar and a lecturer but not as a minister or member of the clergy. In contrast to the petitioner's job description, the beneficiary describes his job title as Director of Religious Affairs. The beneficiary's resume also states that he has had prior experience as an Import Manager and that he worked voluntarily as a Religious Leader in Tokyo and as a Visiting

Lecturer for various Islamic Centers in Dubai, UAE. The application and the record reflect that the beneficiary was doing business in Dubai since 1998. . . . The beneficiary does not consider himself a head priest or religious minister nor has he ever worked in that capacity.

On appeal, counsel asserts that the beneficiary's use of the term "Director of Religious Affairs" on his résumé is a semantic issue rather than an admission that he is not an *aalim*. We agree that the beneficiary's choice of terminology is not, in itself, a disqualifying factor or strong grounds for denial of the petition.

Counsel claims that the beneficiary earned his degrees in "specific programs for the training of Shi'a clerics & theologians, and their diplomas are equivalent to Christian ordination, empowering their recipients to become Islamic ministers." To support this claim, the petitioner has submitted letters from religious authorities in Chicago, New York and New Delhi, attesting to the sufficiency of the beneficiary's background and qualifications. The AAO is of the opinion that these letters are not easily dismissed, and have considerable weight regarding the issue of the beneficiary's qualifications as an *aalim*. If the director is still concerned about the beneficiary's qualifications, or the sufficiency of evidence offered regarding those qualifications, then the director should articulate these concerns in a new RFE and specify the type of evidence that the director would consider sufficient in that regard. As we have noted, the director's prior RFE did not touch on the issue of the beneficiary's qualifications at all.

Pursuant to the above discussion, the AAO withdraws the director's finding regarding the beneficiary's qualifications as an *aalim*.

The next issue relates to the job offer extended to the beneficiary. 8 C.F.R. § 204.5(m)(4) requires the petitioner to submit a letter from an authorized official of the religious organization in the United States seeking to employ the beneficiary, stating how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration).

██████████ stated in his introductory letter that the petitioner "continues to pay [the beneficiary] \$2000.00 as his monthly salary. He has also been provided with a suitable accommodation, and health benefits have also been extended to him."

Copies of canceled checks show that the petitioner has provided the beneficiary with \$2,000 on most, but not all, months since January 2003. A lease agreement indicates that the beneficiary sublet a dwelling from the petitioner. The agreement does not show that the accommodations were provided free of charge. Rather, the lease requires \$1,200 rent per month, in addition to a \$1,000 security deposit. The agreement also specifies that the petitioner would not be responsible for any utility payments. There is no written provision for the rent payments to be waived in exchange for the beneficiary's services. Given the terms of the sublease, the beneficiary's accommodations are essentially subtracted from, rather than part of, his compensation from the petitioner.

The director's 19-item RFE, mentioned above, contained no inquiry about the nature of the job offer.

The director denied the petition on December 29, 2006, based in part on the finding that the petitioner had failed to provide a "comprehensive description of the petitioner's actual job offer" including "the terms of payment for the services and all other remuneration." The director acknowledged that a statement from the beneficiary contained "very specific amounts and methods of compensation," but "no corroborating statement from the petitioner was submitted except a claim to pay the beneficiary \$2000 a month in addition to any unspecified housing allowance and health insurance. What the beneficiary is actually paid is not evident from the documentation provided."

On appeal, counsel states: "the 2005 income tax returns of the beneficiary clearly indicate that he is already being paid [\$2,000 per month] by" the petitioning organization. Actually, the 2005 tax return itself (which we shall discuss in greater detail elsewhere in this decision) does not identify the source of the beneficiary's income, although the beneficiary's claim of \$24,000 in salary is consistent with monthly payments of \$2,000 from the petitioner. The petitioner has submitted copies of some \$2,000 checks dated 2005, payable to ██████████ ██████████" cited as a name sometimes used by the beneficiary, although the name "Abidi" appears nowhere on his passport or on the Form I-360 petition.

Prior counsel asserts that the petitioner has described, in detail, the beneficiary's compensation package, and that "[t]here is abundant evidence now to establish that the beneficiary has been and will be 'solely carrying on the vocation of a minister.'" We agree that the petitioner has adequately described the claimed arrangements for the beneficiary's compensation. We shall return to the issue of whether the beneficiary will be solely carrying on the vocation of a minister.

We agree that the petitioner has established monthly \$2,000 payments to the beneficiary (which appear to have increased to \$2,500 monthly). There is also strong evidence regarding payment of the beneficiary's medical benefits; his name appears in the "memo" section of several checks paid to a health plan. There remain, however, questions about the beneficiary's compensation. Most significantly, the petitioner has claimed that it provides the beneficiary's housing, and the beneficiary has specified this amount at \$1,750 per month, but this information conflicts with the previously submitted lease agreement, which indicates that the beneficiary owes the petitioner \$1,200 rent per month. This lease agreement is a contemporaneous documentary record; the letters carry less weight as statements written for the express purpose of securing immigration benefits for the beneficiary. Given that both the beneficiary and an official of the petitioning mosque have signed a legally binding document obligating the beneficiary to compensate the petitioner for housing, it is anything but obvious that the petitioner provides the beneficiary's housing free of charge.

The petitioner submits, on appeal, copies of several monthly checks from the petitioner payable to ██████████ ██████████. The name of ██████████ appears nowhere on the lease agreement between the petitioner and the beneficiary. Many of these checks are for \$1,715, but the amount sometimes varies. Many of these checks are marked "Rent"; some checks from 2006 are marked "██████████'s Rent." A newsletter previously issued by the petitioning mosque uses the honorific title "██████████" in reference to the beneficiary, but also in reference to several other individuals. Therefore, the term "██████████" is clearly not exclusive to the beneficiary.

It may well be that the checks reproduced in the record paid the beneficiary's rent. Nevertheless, because the checks contain no clear mention of the beneficiary, the lease agreement does not mention ██████████ and the

monthly rent shown on the checks does not match the amount shown on the lease agreement, the available evidence is not sufficient to show that the petitioner has provided and paid for the beneficiary's housing. Additional documentary evidence is needed in this regard, and the director must allow the petitioner an opportunity to provide such evidence before the director renders a new decision.

Finally, we come to the related issues of the beneficiary's past experience and the purpose for which he intends to enter the United States. 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 April 11, 2005. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an *aalim* throughout the two years immediately prior to that date.

Section 101(a)(27)(C)(ii)(I) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(I), requires that the alien seeking classification "seeks to enter the United States . . . solely for the purpose of carrying on the vocation of a minister." The AAO interprets the language of the statute, when it refers to "entry" into the United States, to refer to the alien's intended *future* entry *as an immigrant*, either by crossing the border with an immigrant visa, or by adjusting status within the United States. This is consistent with the phrase "*seeks to enter*," which describes the entry as a future act. Therefore, past entries by the beneficiary as a nonimmigrant are not definitive or dispositive in this regard, although depending on the individual circumstances they may be relevant to the issue of the beneficiary's intended future activities.

██████████ stated in his introductory letter that the beneficiary "started serving [the petitioner] in February 2002, after he was issued an R-1 (non-immigrant Religious Worker) visa by the American Embassy in Japan and his R-1 status has later been extended." ██████████ added that the beneficiary "also served the Islamic Community of Tokyo, Japan from March 2000 to December 2001 as a Resident Scholar on a voluntary basis while he was working there as an import manager."

The petitioner submitted copies of canceled checks showing that the petitioner paid the beneficiary \$2,000 per month from January 2003 to March 2005. The sequence is not continuous; there are no checks from February 2003, October 2003 or February 2004. While there is no check from August 2004, there is a photocopy of a pay receipt from that month. The 2003 and 2004 checks are in the beneficiary's true name; the three checks from early 2005 are payable to '██████████'. The January and March 2005 checks (neither of which are stamped as having been presented for payment) are for \$2,000 each; the canceled February 2005 check is for \$2,500.

The director, in the RFE, requested copies of the beneficiary's income tax returns for 2002 through 2005, as well as documentation of the source or sources of that income. The returns show that, each year, the beneficiary filed not only an Internal Revenue Service Form 1040 return, but also Schedule SE, Self-Employment Tax. Self-employment income is taxed separately from salary income, as is clear from the structure of Form 1040 and Schedule SE.

The petitioner asserted that the beneficiary “is paid a fixed remuneration every month,” and “has paid self-employment tax as per the advice of his tax consultant.” In a statement dated December 16, 2006, the beneficiary stated:

Since my 2002 arrival in the United States, my only source of income is my employer, [the petitioner].

I have not received any gifts over \$500.00 in value from [the petitioner] other than my present monthly salary in the amount of \$2,500.00, monthly housing allowance in the amount of \$1,750.00, and medical health plan premiums in the amount of \$8,499.00 annually.

I have not received any income from any other source since my arrival in the United States in 2002.

The beneficiary’s self-prepared tax returns, however, appear to tell a different story. Those returns, including Form 1040 and Schedule SE, show the following information:

	2002	2003	2004	2005
Wages, salaries, tips, etc.	\$10,500	\$20,000	\$20,000	\$24,000
Taxable income	2,283	0	0	0
Tax	229	0	0	0
Net profit (from Schedule SE)	18,285	27,520	22,637	38,400
Self-employment tax	2,584	3,888	3,198	5,426

In each year, the beneficiary’s “net profit” exceeds his reported salary; the “net profit” for 2005 exceeded that salary by 60%. The fluctuating “net profit” amounts are not at all consistent with “a fixed remuneration” as the petitioner claims. Salaries and profits from self-employment are separate categories of income; they are not interchangeable terms. This fact, coupled with the discrepant amounts, strongly suggests an unidentified second source of income. The beneficiary’s tax returns therefore raise more questions than they answer. The salary amounts for 2003-2005, all evenly divisible by 2,000, are generally consistent with monthly \$2,000 payments from the petitioner. This indicates that the beneficiary reported those checks as salary rather than as “net profit.” The petitioner did not submit any documentation to show the source of the beneficiary’s \$88,557 in “net profit” from self-employment during those three years, and the beneficiary essentially denied its existence by claiming that the petitioner was his only source of income during that period.

Documents submitted by the petitioner show that the beneficiary owned 24% of Basim Trading, a limited liability corporation based in Dubai in the United Arab Emirates, and engaged in trading electronics and appliances. The record does not contain any evidence that the beneficiary ever sold his interest in that company. The beneficiary’s passport shows a very significant amount of international travel before and, to a lesser extent, during the two-year qualifying period. After April 11, 2003, the beneficiary traveled repeatedly to the United Arab Emirates (home of Basim Trading) as well as Iran and Saudi Arabia. The beneficiary also traveled repeatedly to Japan during 2002, when he was already employed by the petitioner. The beneficiary

claimed that, in June 2002, he resigned from an unspecified position at a Japanese company called Wishco, but he visited Japan on subsequent occasions, for instance between November 27 and December 7, 2002.

Upon his return from a trip to India and Malaysia in July 2002, the United States Customs Service examined the beneficiary's luggage and discovered 24 loose diamonds and other jewels which the beneficiary had failed to disclose on his customs declaration. Documents in the record indicate that Customs seized the stones, valued at over \$40,000, but subsequently returned them on bond. The director, in the RFE, requested the beneficiary's explanation. The beneficiary claimed that he purchased the stones from Peacemoon Traders in India, and that he had brought them to the United States solely for the purpose of having them appraised and certified.

On December 13, 2006, an immigration officer interviewed the beneficiary regarding the undeclared diamonds. The beneficiary stated that he had not been aware that he was required to declare the diamonds to Customs.

In denying the petition, the director noted the beneficiary's business activities and concluded: "The record does not establish that the beneficiary entered the United States *solely* to perform the duties of a minister." The director further found that "[t]he petitioner has made no claim that the beneficiary engaged solely as a minister of the religious denomination [during] the two-year period" immediately prior to the filing date. Regarding the diamonds, the director did not find the beneficiary's attempted explanation to be credible. Noting that "the beneficiary and his family had been in the diamond business for many years and he had extensive international experience as an import manager," the director found it to be unlikely that the beneficiary would be ignorant of customs proceedings involving the transport of \$40,000 worth of diamonds. Therefore, the director concluded, the beneficiary's personal attestations have diminished weight in this proceeding. The director found that the petitioner failed to demonstrate that "the beneficiary was working full-time and only for [the petitioning] organization."

In finding the beneficiary's credibility to be a factor, the director cited *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988), which states that 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. *Id.* at 586. 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, in fact, lies, will not suffice. *Id.* at 582, 592.

The AAO agrees with the director that the beneficiary's credibility is a material issue in this proceeding, and there do appear to be questions in this regard. For instance, he claims that his sole income in the United States has consisted of monthly \$2,000 checks from the petitioner, but he claimed an additional \$38,400 in "self-employment" income on his 2005 tax return (which, in turn, the beneficiary had marked "self-prepared"). That being said, however, the director appears to have relied too heavily on the issue of the diamonds that the beneficiary was carrying in 2002. The two-year qualifying period did not commence until April 2003, and therefore the beneficiary's activities the previous summer are of at best secondary consequence. Even if the beneficiary had brought those diamonds in pursuit of an active import/export business, this by itself would not establish that he seeks to engage in such business in the future.

The key is that, by statute, the beneficiary must have been engaged solely as a minister both during and after the 2003-2005 qualifying period. A definitive conclusion in this matter appears to hinge on the petitioner's ability to explain the \$88,557 in income that the beneficiary reported over and above his \$64,000 in salaries on his tax returns for 2003-2005. It cannot and will not suffice for the petitioner to produce a statement from the beneficiary to the effect that he made a series of mistakes on his tax returns; the information on the returns appears to be internally consistent.

We acknowledge the petitioner's submission, on appeal, of a substantial number of witness statements from members of the petitioner's congregation. These individuals attest to the beneficiary's work on behalf of the petitioning mosque and its worshipers. The director did not claim that the beneficiary does not work at the mosque. The issue, rather, is whether this religious work is the beneficiary's *only* source of income. The record, as it now stands, raises questions in this regard. Letters describing the beneficiary as an *aalim* cannot resolve this issue, as the petitioner's parishioners are unlikely to have such sure and certain knowledge of all of the beneficiary's activities that they can rule out his involvement in outside income-generating work.

For the above reasons, we find the director's decision to be deficient, and hereby withdraw that decision. At the same time, however, we find that the petition cannot properly be approved unless and until the petitioner adequately addresses the issues enumerated above.

We note that the petitioner has, on more than one occasion, emphasized the importance of expeditious handling of this proceeding. We acknowledge the petitioner's concerns, and stress here that the purpose of this remand order is not to cause further delays, but rather to allow the petitioner a fair opportunity to address deficiencies in the record. If the petitioner were to demand or insist upon a decision based on the record as it now stands, then denial would be the only appropriate course of action owing to the absence of crucial information, as described above. Therefore, the purpose of this remand order is not to defer or delay a final outcome, but rather to afford the petitioner a final opportunity to remedy these deficiencies in the record.

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, regardless of the outcome, is to be certified to the Administrative Appeals Office for review.