

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

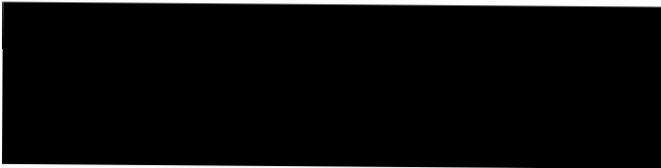
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

C1



FILE: EAC 01 179 50970 Office: VERMONT SERVICE CENTER Date: **AUG 14 2008**

IN RE: Petitioner:
Beneficiary:



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:

SELF-REPRESENTED

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
fo Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is identified as a Muslim 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), purportedly to perform services as a religious teacher. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a religious teacher immediately preceding the filing date of the petition. In addition, the director cited numerous credibility issues arising both from the lack of documentation of the beneficiary's claimed past work and from the large number of similar petitions filed by the petitioner within a short period of time.

On appeal, the director of the petitioning mosque asserts that the beneficiary worked as claimed, and that the rapid growth of the congregation has necessitated substantial growth in the petitioner's teaching staff.

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 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 27, 2001. Therefore, the petitioner must establish that the beneficiary was

continuously performing the duties of a religious teacher throughout the two years immediately prior to that date.

In a letter submitted with the initial filing, _____ director of the petitioning entity, states:

[The beneficiary] is one of our professional religious teachers.

[The beneficiary has been] one of the members of our organization for two years and has in total more than five years experience in teaching religion to the Muslim community. . . . She works 40 hours a week, Monday to Friday, from 3:00 PM to 11:00 PM. She is on our payroll, our organization is paying her \$200.00 per week. . . .

[M]ost of the community members contact us to provide them [with a] professional religious teacher in their houses, whether a mosque is close to their residence or not. The religious teacher has to teach in a mosque as well as in houses according to the need of the community.

The petitioner submits a copy of its IRS Form 941 Employer's Quarterly Federal Tax Return for the first quarter of 2001. Line 1, "Number of employees," has been left blank. On IRS Form 990, Return of Organization Exempt From Income Tax, the petitioner claims to have paid \$515,800 in salaries and wages during 2000.

The petitioner submits copies of Form W-2 Wage and Tax Statements, indicating that the petitioner paid 40 employees a total of \$488,400 in 2000. This accounts for all but \$27,400 of the wages listed on Form 990 for the same year. The accompanying transmittal form indicates that the petitioner issued 42 Forms W-2 for 2000, showing a total of \$515,800 in wages paid. The two missing Forms W-2 would appear to account for the final \$27,400. Despite _____'s assertion that the beneficiary is "on our payroll," there is no 2000 W-2 in the beneficiary's name, and we are not obliged to assume that one of the missing Forms W-2 belongs to the beneficiary.

On January 16, 2002, the director issued a request for evidence (RFE) instructing the petitioner to submit various types of documentation, including income tax documents showing how the beneficiary has supported herself in the United States. The director also requested "historical documentation such as time sheets, work logs, pay receipts, etc." to show that the beneficiary worked as claimed.

In response, _____ states "the beneficiary is teaching religion from house to house at 6 different locations in New York. She teaches from 3:00pm to 11:00pm, Monday to Friday, full time 40 hours a week." He states that the beneficiary has been "on our payroll since February 15, 1999 as is eviden[t] from enclosed Form 1099 Misc. for year[s] 1999 [and] 2000 and Form W-2 for the year 2001 and pay stubs for the year 2002."

The petitioner submits copies of what purport to be Form 1099-MISC Miscellaneous Income statements issued to the beneficiary in 1999 through 2001, and a 2001 Form W-2, alleging that the petitioner paid the beneficiary \$7,125 in 1999, \$5,102 in 2000, and \$10,400 in 2001 (\$8,400 shown on the 1099, and \$2,000 on

the W-2). Like all the Forms W-2 submitted with the initial filing, the forms listed above show the employee's name in care of the petitioner's address, instead of the employee's actual address. Assuming for the sake of argument that the Forms 1099 from 1999 and 2000 are authentic, neither of those forms reflects an amount consistent with a year of full-time employment.

The petitioner also submits a copy of what purports to be the beneficiary's Form 1040 income tax return for 2001. The return shows \$2,000 in wages and \$8,400 in business income, consistent with the Forms 1099 and W-2. The total gross income, \$10,400, is consistent with 52 weekly payments of \$200 each. (If this amount reflects 40 hours per week, as alleged, then it is less than the federal minimum wage.) The tax return is dated March 4, 2002, over a month after the director issued the RFE. In fairness, the return was prepared during the usual January 1-April 15 window for individual tax return preparation. It would be unrealistic to expect the beneficiary to have completed her income tax return preparation prior to the January 16 issuance of the RFE.

The petitioner submits copies of the beneficiary's amended tax returns for 1999 and 2000. These amended returns were also prepared on March 4, 2002. Annotations on the forms indicate that the tax returns are being amended because the beneficiary's income from the mosque "was not recorded in the original return." Thus, there is no indication that the beneficiary ever reported her alleged income to the Internal Revenue Service until after the director specifically requested tax documents. The amended returns, apparently prepared specifically for the director's benefit, have no value as contemporaneous evidence of employment.

The petitioner submits what purport to be pay stubs, showing payments of \$360.60 to the beneficiary every two weeks during the first three months of 2002. These payments fall outside the two-year qualifying period and thus they do not establish the beneficiary's employment between April 1999 and April 2001.

The petitioner submits copies of several letters, purportedly from parents of the beneficiary's students. The letters all follow an identical format, the only variations being names, addresses, and either the word "child" or "children" depending on the number of children in the household.

██████████ asserts that the parents' letters demonstrate the beneficiary's full-time experience throughout the two-year qualifying period. The petitioner asserts that the beneficiary has taught each of six families for 70 minutes every weekday. The letters do not contain that information. The letters indicate when the beneficiary began teaching the children, but there is no indication of the duration or frequency of the lessons.

The petitioner also submits a list of 159 special immigrant petitions that it has filed since 1996; all but a few dozen were filed in 2000-2001.

The director denied the petition on August 5, 2002, stating:

Service records indicate that you have recently filed an inordinately high number of petitions for religious positions identical to the offered position on this petition. . . . The legitimate nature of the evidence submitted supporting such filings may be reasonably questioned when adjudicating what appear to be frivolous subsequent filings. . . .

You claim that . . . [t]he beneficiary is not listed on your payroll because he has not been issued a social security number. You state that you have been supporting him through cash payments totaling \$200.00 per week though you did not submit evidence establishing any payments to the beneficiary. . . . Of the numerous 200 [sic; this apparently should read "2000"] Form W-2 (Wage and Tax Statements) you have submitted; your submission did not include a Form W-2 issued to the beneficiary. Your statements issued by the parents of children the beneficiary teaches is not sufficient to establish that he possesses the requisite two-years of continuous work experience prior to your filing. The record did not include corroborative evidence such as the beneficiary's individual personal income tax returns, timekeeping records, or Form W-2 (Wage and Tax Statements) establishing the beneficiary's claimed work experience.

[I]t is highly unlikely that any comparable organization would require the services of over 100 workers during this time period. When these filings are considered in conjunction with the absence of timekeeping or reported payroll records issued to the beneficiary, it is reasonable to conclude that the beneficiary does not possess the requisite work experience as of the date of filing of this petition. Additionally, the Service is not persuaded that you have the ability or intention to employ the beneficiary given the number of petitions you have filed in such a short time span. As a result, the record is not persuasive in establishing the legitimate nature of the offered position.

We note some inaccuracies in the director's decision. In this instance, the petitioner has submitted copies of the beneficiary's tax returns, but, as noted above, these returns were amended after the issuance of the RFE in order to reflect the beneficiary's claimed income from the petitioning mosque. The director was correct in observing that the numerous Forms W-2 dated 2000 included no such form in the beneficiary's name. Thus, while the petitioner was purportedly in possession of tax documents for its employees when the petition was filed in 2001, no such documents in the beneficiary's name surfaced until after the issuance of the RFE – an event that also triggered the beneficiary's filing of amended tax returns to show such income. Even then, as we have noted, the amounts allegedly paid to the beneficiary in 1999 and 2000 are not consistent with full-time, year-round employment.

On appeal, [REDACTED] states:

The beneficiary is a religious worker . . . and has been working as such since February 15th. Our organization (The petitioner) has been providing religious services, including teaching, since its establishment in 1986. The number of its full time employees has been gradually increasing due to rapidly growing needs of the Muslim Community.

In a separate letter, [REDACTED] again cites the parents' letters submitted previously. He also claims: "We have hired over 100 teachers according to community demand during the period [of] three years from January 14, 1998 to April 14, 2001."

The petitioner submits copies of its Forms 990 for 1997 through 1999. For 2000 and 2001, the petitioner submits copies not of its own Forms 990, but those of [REDACTED] of N. America, Inc., an Islamic school in Elmont, New York. The petitioner does not explain the relevance of this document; there is no overlap between the two entities' lists of officers, nor is there any other evidence of a connection between the two entities. Given the simultaneous submission of the petitioner's own earlier Forms 990, the petitioner may have intended to submit its own Forms 990 for 2000 and 2001, and submitted those of the madrassa in Elmont by mistake. How and why the petitioner came into possession of the madrassa's Forms 990 are questions outside the scope of this decision.

The petitioner submits copies of additional pay stubs, showing further biweekly payments of \$360.60 to the beneficiary in 2002. As stated above, these stubs do not show continuous work during the qualifying period. The credibility of the payroll documents themselves is in question as well, as we shall address later in this decision.

[REDACTED] claims that teaching students in their homes, rather than at the mosque or some other central location, "is practicable, economical, saving time and easy for the parents, children and teachers." He contends that many parents are unable to transport their children back and forth to the mosque for lessons, and also that there would be "wastage of time to bring the students to our place." These claims are difficult to defend. The petitioner has not explained why it is "economical" to send over a hundred teachers from house to house, teaching each family separately, instead of hiring a smaller teaching staff to provide the same lessons to larger groups at a central location. With respect to the time expended in transporting students to the mosque, an equal amount of time is required to transport teachers from the mosque to a student's home. Additional time is then required for that teacher to travel from one home to the next.

In the schedule provided by [REDACTED] the beneficiary supposedly teaches the children of three families that all live in the same apartment building on East 8th Street in Brooklyn. Rather than gather the children together and teach them at the same time, the beneficiary is said to teach one family's four children, on the second floor, from 7:20 p.m. to 8:30 p.m.; then the single child of another family, on the seventh floor, from 8:35 p.m. to 9:45 p.m.; and then the two children of the last family, on the third floor, from 9:50 p.m. to 11:00 p.m. These last two children thus could have completed their lesson two and a half hours earlier had they traveled down one flight of stairs, and the petitioning mosque is obliged to pay the beneficiary three hours and forty minutes worth of wages for seventy minutes of work repeated twice. The petitioner's claimed system of house-to-house teaching appears, from the information provided, to be highly impractical and time consuming, as well as expensive.

Given the enormous expense of maintaining a large full-time staff to perform work that could be performed part-time by a much smaller staff, the claim that the petitioner employs a massive number of house-to-house teachers appears to be intended to explain the tremendous volume of petitions filed by the petitioner in a very short period of time. The petitioner's assertions in this vein are sorely lacking in credibility.

When considering the petitioner's credibility, additional information bears consideration. On September 22, 2004, [REDACTED] was convicted in federal court on eight criminal counts of visa fraud and related

charges. He was subsequently sentenced to a term of 51 months in prison. A press release from the United States Attorney, Southern District of New York, relates details of the charges:

was convicted of all eight counts of an Indictment that charged him with conspiring to submit hundreds of false applications on behalf of illegal aliens under the Religious Worker Program . . . and to obtain genuine Social Security cards in false names. [REDACTED] was also convicted of making false statements to INS agents related to the investigation. . . .

According to the Indictment and as proved at trial, [REDACTED] filed fraudulent paperwork with the INS for numerous non-religious workers to obtain Religious Worker visas for which the aliens were not eligible in exchange for fees ranging from \$5,000 to \$8,000 in cash. [REDACTED] also orchestrated a complex fraudulent payroll scheme whereby he issued bogus payroll checks to the applicants on a bi-weekly basis, requiring the illegal aliens to return to him the amount of the check in cash, plus an additional amount that [REDACTED] told the aliens was required to pay his employer taxes. [REDACTED] then filed tax returns for the mosque, issued W-2's to the applicants, and required them to file personal tax returns stating that they were employed as religious workers at the mosque. This scheme was operated to further deceive the INS into believing that [REDACTED] mosque was a large-scale entity with a burgeoning congregations served by [REDACTED] many religious workers. The Government's evidence at trial showed that [REDACTED] drastically overstated the operations of his mosque and the size of his congregation.

[REDACTED] fraud conviction, while not the basis for the director's denial, nevertheless serves as proof that the director was entirely justified in doubting the petitioner's claims regarding the size and personnel needs of its congregation.

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. See *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Here, the submitted evidence fails to establish the truth of the petitioner's claims. A small number of the tax documents in the record purport to establish payments to the beneficiary, but taken at face value they do not suggest full-time work before 2001. Even then, it has been proven in federal court that M [REDACTED] manipulated the petitioner's payroll to create the illusion of a large paid staff. This information compromises the evidentiary value of the Forms 1099 and W-2 bearing the beneficiary's name. The timing of the beneficiary's amended tax returns casts further doubt in this regard. Because the family letters are virtually identical to one another, it is clear that they derive from a common source of undetermined credibility. Ultimately, the petitioner's claim hinges on the assertions of [REDACTED] who, as explained above, has been convicted and incarcerated on fraud charges directly related to special immigrant religious worker petitions.

When a petitioner is known to have been involved in immigration fraud on a large scale, we cannot ignore that petitioner's inability to provide persuasive evidence in regard to individual petitions. 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. 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. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988). If Citizenship and Immigration Services (CIS) fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Taking the above factors into account, we cannot find that the petitioner has submitted credible, probative evidence to show that the beneficiary meets the two-year continuous employment requirement. Therefore, the petitioner has not established that the beneficiary qualifies for the classification sought; and there exist very firm grounds for doubting that a *bona fide* job offer exists at all.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361 The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.