



U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[Redacted]

JAN 09 2002

File: [Redacted] Office: Nebraska 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)

IN BEHALF OF PETITIONER:

[Redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 Service 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is described as an Islamic religious organization operating, in part, a mosque. 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), in order to employ her as a "religious instructor" at a salary of \$300 per week.

The director denied the petition on the grounds that the petitioner failed to establish that the beneficiary had had at least two years of continuous experience in a religious occupation during the period immediately preceding the filing of the petition. The director concluded that the claim that the beneficiary had been a full-time volunteer worker with an affiliated religious organization in her own country was insufficient to satisfy the requirement that she had been continuously carrying on a religious occupation for at least the two years preceding the filing of the petition.

On appeal, counsel for the petitioner argued that the decision was arbitrary and capricious. Counsel asserted that the beneficiary was employed by the foreign mosque and that copies of her Tanzanian tax returns were submitted as evidence.

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, 2003, 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, 2003, 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 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 petitioner in this matter is a religious organization recognized by the Internal Revenue Service with the appropriate tax exempt status. The beneficiary is described as a native and citizen of Tanzania currently residing in that country.

At issue in this proceeding is whether the petitioner has established that the beneficiary had had the requisite two years of continuous experience in a religious occupation.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

All three types of 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 petition was filed on January 3, 2000. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least January 3, 1998.

In this case, an official of the petitioning organization furnished a letter dated October 8, 1999, stating that the beneficiary has been a full-time volunteer religious instructor with her mosque in Tanzania since 1995. The petitioner also submitted a letter dated March 14, 1999, from [REDACTED] President, [REDACTED] in Bukoba, Tanzania stating that the beneficiary has been a full-time volunteer religious instructor since 1995.

On appeal, counsel argues that the beneficiary was an employee, not a volunteer, with the foreign mosque. Counsel also asserted that the beneficiary's foreign tax returns were furnished as evidence of her employment.

On review, counsel's argument is not persuasive. First, counsel's assertions directly contradict the testimony of the petitioner and the president of the beneficiary's foreign mosque. The assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533 (BIA 1988). 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 (BIA 1988). Accordingly, there is no evidence that the beneficiary was actually employed in a religious occupation by the Khoja Shia Ithnaasheri Jamat as asserted by counsel.

Second, while counsel asserted that the he submitted the beneficiary's foreign tax returns as evidence of her alleged employment, such documentation is not evident in the record. The mere claim that evidence was submitted cannot be afforded any evidentiary weight.

As noted by the director, voluntary activities with one's religious organization is not considered engagement in a religious occupation and such activities are not considered as continuous experience in a religious occupation. Accordingly, it must be concluded that the petitioner has failed to overcome the director's objection.

Beyond the discussion in the director's decision, the petitioner has failed to demonstrate eligibility on other grounds. The petitioner has failed to establish that it has the ability to pay the proffered wage pursuant to 8 C.F.R. 204.5(g)(2). As the appeal will be dismissed on the grounds discussed, this issue need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.