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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

AUG 15 2003

File:  Office: VERMONT SERVICE CENTER Date:

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:

INSTRUCTIONS:

This is the decision 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.

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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office 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, 8 U.S.C. § 1153(b)(4), to perform services as an imam. The director determined that the petitioner had not established its own tax exempt status, or that the beneficiary had the requisite two years of continuous work experience as an imam immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that the position constituted a qualifying occupation.

On appeal, the petitioner submits copies of previously submitted documents and a brief from counsel.

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 regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file an 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 record contains three copies of a letter from the Internal Revenue Service, attesting to the petitioner’s qualifying tax-exempt status. While the address on the letter differs from the petitioner’s current address, the petitioner has offered a credible explanation, indicating that the letter was sent to a temporary address and that the mosque has since moved. The director stated that the petitioner has not established that the Internal Revenue Service is aware of the petitioner’s new address, but the director has not explained why the change of address would affect the petitioner’s tax-exempt status. The address on the exemption letter matches that on corporate documents such as by-laws and 2001 tax documents. We hereby withdraw the director’s finding that the petitioner has not established its tax-exempt status.

Another issue in this proceeding is whether the petitioner has made a qualifying job offer. 8 C.F.R. § 204.5(m)(4) states that each petition for a religious worker must be accompanied by a job offer from an authorized official of the religious organization at which the alien will be employed in the United States. The official must describe the terms of payment for services or other remuneration.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a “religious occupation” and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term “traditional religious function” and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term “traditional religious function” to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

Further, while the determination of an individual’s status or duties within a religious organization is not under the Bureau’s purview, the determination as to the individual’s qualifications to receive benefits under the immigration laws of the United States rests within the Bureau. Authority over the latter determination lies not with any ecclesiastical body but with the secular

authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

In a letter accompanying the initial filing, [REDACTED] then president of the petitioning mosque, stated:

The position we seek is to classify [the beneficiary] as an Imam (priest). . . .

We have 100 permanent members. . . .

Before joining us on Nov. 10th 1999 [the beneficiary] was working with Islamic Institute (Mosque) in India covering a period of more than two years. . . .

He has been performing full time duties since Nov. 10th 1999. His duties include daily prayer services, funeral, wedding and religious instructions. Daily lectures on various topics. This requires that the Imam works between 8-10 hours a day 5-6 day per week; a total of 40-43 hours/week. . . .

[The beneficiary] is adequately trained and has the necessary experience as an Imam to perform the mentioned duties as a Religious Worker. We intend to employ him at a salary of \$18,500.00 per year and he will not be dependent on any supplemental funds or solicitations of funds for support.

The petitioner provides a schedule, indicating that the beneficiary begins each work day at 5:00 a.m., and works intermittently throughout the day, finishing at 10:00 p.m.

The director requested "evidence that establishes that the beneficiary has the continuous two years full-time experience in the . . . religious work for the period immediately prior to April 27, 2001."

The director also instructed the petitioner to submit evidence that the beneficiary's occupation consists primarily of "traditional religious functions above those performed routinely by other members."

In response to the notice, the petitioner has submitted letters from its new president, [REDACTED] who essentially repeats [REDACTED] earlier claims and indicates that the beneficiary's duties include "daily prayer sessions" and evening religious instruction for various age groups.

The petitioner has also submitted translated certificates from India. Officials of Madarsa Islami-Arabi Meerut indicate that the beneficiary, "born on 25th Oct. 1968 . . . , completed Islamic Religious and Cultural Education as resident Hostler in our institution since Jan. 1973 to Oct. 1978." This education concluded the same month as the beneficiary's tenth birthday. Another certificate from the same entity indicates that the beneficiary "has completed the course of training of Imam and Course of Lecturership in Islamic Studies as Resident Hostler in our Institution since Dec. 1988 to Sept. 1992." The significance of this training, provided as it was by a facility that

also trains four-year-old children (such as the beneficiary in January 1973), is not clear from the record.

Officials of Masjid Ali Bakhsh Alias Masjid Taal Wali state that the beneficiary “has worked as Imam and Lecturer since Dec. 1995 to Jan. 1998 in this mosque.” Officials of Madeena Masjid and Madarasa-E-Rahmania state that the beneficiary “was working as a ‘priest’ at this mosque from 10.02.1998 to 15.06.1999.” The certificates do not specify whether the beneficiary worked full-time or part-time in the above positions.

The petitioner has also submitted a copy of a dictionary definition of “imam,” which reads “a Moslem prayer leader officiating in a mosque . . . any of several spiritual and temporal Moslem leaders.” The definition’s use of the phrase “any of several” suggests that there are numerous different types of position that fall under the umbrella term “imam.”

The director denied the petition, stating that the petitioner has failed to provide documentary evidence to show that the petitioner is a qualifying religious organization or that the position of imam is a qualifying religious occupation that requires specific “religious training above the level of a caring and dedicated congregation member.”

Counsel discusses, at length, case law concerning the definition of a “minister,” but counsel does not claim outright that the beneficiary qualifies as a minister. Counsel states “[i]n recent cases the AAO stated that a certificate of ordination alone does not prove that an alien is qualified to perform the duties of a minister or pastor, particularly where no other documents were filed in support of the beneficiary’s qualification.” In this regard, we note that the petitioner has claimed that the beneficiary is authorized to officiate at weddings and funerals, but the record contains no documentation (such as wedding certificates dated prior to the petition’s filing date) to show that the beneficiary has actually so officiated. Counsel asserts on appeal that “an Imam is the spiritual leader in the Moslem faith akin to a Rabbi or Priest in the Jewish or Catholic religions,” but the appeal includes no new evidence to support the assertion that the duties of an imam are invariably parallel to those of a rabbi or priest.

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 April 27, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as an imam throughout the two-year period immediately preceding that

date. The beneficiary's employment dates are listed in the employment letters discussed above and will be reviewed below. Counsel, on appeal, asserts that the director "erred in stating that beneficiary did not possess the required 2 years of qualifying experience."

Counsel cites various documents that the petitioner has submitted to establish the beneficiary's experience. These documents, however, strongly support a finding of ineligibility. The employment letters and certificates in the record indicate that the beneficiary's employment in India ceased on June 15, 1999. The beneficiary's Form G-325A Biographic Information sheet, which instructs the alien to list all employment over the past five years, shows employment in India ending on July 1999,¹ and no other employment until he began working for the petitioner in November 1999. The petitioner has repeatedly indicated that the beneficiary joined the petitioning mosque on November 10, 1999. Between June 15 and November 10 of 1999, there is a gap of almost five months, more than one-fifth of the two-year qualifying period, which the petitioner has not addressed or explained. Because of this lengthy interruption in the beneficiary's work, we cannot find that the beneficiary worked continuously as an imam throughout the two-year period ending April 27, 2001.

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. Com. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Com 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

¹ The I-360 petition form indicates that the beneficiary entered the United States on July 3, 1999. This date is more consistent with the employer's stated ending date of June 15, 1999, than with the petitioner's less precise claim that he worked in India until July 1999.

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 salaried. To hold otherwise would be contrary to the intent of Congress.

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.