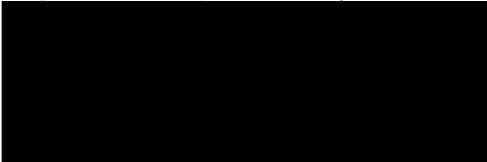


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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 Mass Ave. 3rd Floor  
Washington, D.C. 20536



File: EAC 01 177 54422 Office: VERMONT SERVICE CENTER

Date: **AUG 21 2003**

IN RE: Petitioner:  
Beneficiary:



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)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

**PUBLIC COPY**

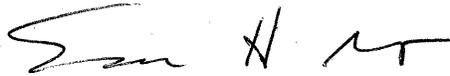
**INSTRUCTIONS:**

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 immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a religious organization. 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), to perform services as an "Islamic Teacher." The director determined that the petitioner had filed over 150 petitions, and that it was not credible that the petitioner is in a position to employ that number of teachers on a full-time permanent basis.

On appeal, the petitioner submitted a statement; a list of 134 teachers with the addresses and names of 582 families whose children are being taught by the organization; a list of 226 members at the time of Friday congregation; and resubmitted documents pertaining to the beneficiary's qualifications, along with various Tax Forms.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

The first issue to be addressed is whether the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing date of the petition. The director raised this issue in citing two policy memoranda relating to full time work, though he did not discuss the issue in detail in terms of the beneficiary.

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).

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

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 alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or 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. 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 April 25, 2001. Therefore, the petitioner must establish that the beneficiary was working continuously as a religious worker from April 26, 1999, until April 25, 2001. The petitioner indicated that the beneficiary last entered the United States on December 5, 2000, but failed to complete the Form I-360, Petition for Amerasian, Widow or Special Immigrant, as it pertained to the beneficiary's status in the United States.

The director requested a statement from the beneficiary regarding his place and manner of entry, and evidence of any legal entry. The beneficiary provided a statement that he obtained an "R type visa" from the American Consulate Islamabad on December 12, 2000 and entered the United States legally at JFK Airport on December 5, 2000. The petitioner provided a copy of some pages of the passport and the I-94. The documents reflect that the beneficiary entered the United States at New York, NY on December 5, 2000 as a B-2 visitor, with permission to remain until June 4, 2001. The passport was issued September 4, 2000 and states the profession of the bearer is a "Religious Teacher." It lists his permanent address as [REDACTED]

In subsequent submissions, however, the petitioner undermines the evidence previously submitted. On appeal the petitioner writes, "It is fact that the beneficiary has been residing illegally in the United States for more than ten years apparently." The petitioner states they filed to help the beneficiary "get his status legalized," and discusses the beneficiary's "purpose for remaining in the United States illegally". These statements cast doubt as to the petitioner's knowledge of the particular beneficiary's case.

The director requested a "detailed weekly work schedule for the beneficiary for the entire two-year period from April 1999-April 2001". In response, the petitioner stated in a letter dated January 30, 2002, that the beneficiary worked in the mosque named [REDACTED] from August 3, 1995 to December 3, 2000. The letter further states that the beneficiary was working in Pakistan in the summers "in the morning from 6:00 AM to 7:30 AM and in the evening from 5:00 PM to 7:00 PM", and in the winters "from 7:00 AM to 8:30 AM in the morning and from 6:00 PM to 8:00 PM in the evening", Monday through Sunday, with Fridays off. We note that the schedule as provided by the petitioner amounts to a total of three and a half (3.5) hours per day/ six days per week, or a total of 21 work hours per week. A letter dated November 9, 2000 from the administrator of [REDACTED] colon [REDACTED] indicates that the beneficiary was paid a monthly salary of Rs.2500 for his services as a religious teacher. Nonetheless, as documented in the record, the beneficiary worked 21 hours per week in the necessary timeframe from April 1999 until he left Pakistan in December 2000. This schedule falls short of requirements for full-time work. Therefore, the beneficiary does not appear to have been employed full time as a religious worker during the required two years prior to filing the petition.

Regarding his work in the United States, the petitioner writes in a letter dated April 23, 2001, "Tha [REDACTED] is one of the members of our organization and has in total more than five years experience in teaching religion to the Muslim community in New York as well as in Pakistan. ... He works 40 hours a week, Monday to Friday, from 3:00 PM to 11:00 PM. As he has no social security number, we cannot put him on our payroll. However, our organization is paying him \$200.00 (cash) per week." The petitioner reiterates in a letter dated November 9, 2001, in response to the director's inquiry, "Some beneficiaries do not have social security numbers and from tax withholding point of view [sic], we cannot put them on payroll, however our organization is paying them in cash for the last two years." The petitioner submitted an affidavit signed by the beneficiary attesting to the fact that he is being paid by the petitioner. The

<sup>1</sup> We note that this letter was submitted three times in the record. The first submission of the letter appears to be a duplicate of the third letter as submitted on appeal, each containing one stamp. The second copy, submitted in response to the director's request for additional information, however, bears three inked stamps with pen signatures, none of which exactly resembles the signatures on the other two letters. One of these stamps bears the name [REDACTED] and is dated in pen "12/3/01", a date later than applicant's arrival in the United States. No explanation is provided for the discrepancies.

petitioner also submitted statements from six families, all of which were notarized on April 23, 2001, by [REDACTED] indicating that the beneficiary works for the petitioner and is paid by the organization.<sup>2</sup> However, the petitioner has submitted no bank records, cancelled checks, or other objective documentation to establish the beneficiary's receipt of salary payments from April 1999 onward, establishing that the beneficiary was, in fact, paid. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Furthermore, the record is inconsistent regarding the beneficiary's daily schedule of teaching in New York. The statement the petitioner provided on appeal is inconsistent with earlier letters and is internally inconsistent. While the letter dated April 18, 2002 states the applicant works "40 hours" a week, it also states that the beneficiary "is teaching the student [sic] at each location for one hour and forty five minutes and he has 6 locations to teach and it takes him two hours every days to reach his all 6 teaching locations." Teaching at six locations for one hour and forty-five minutes would amount to more than an eight hour day. Despite the petitioner's efforts to clarify the schedule, the issue remains unclear due to the inconsistent statements.

For the reasons discussed above, the record contains insufficient evidence to establish that the beneficiary was employed in a qualifying position in Pakistan and by the petitioning organization throughout the two years immediately preceding the filing date of the petition. Therefore the petition must be denied.

At the heart of the director's decision is the issue of whether the petitioner had received a valid job offer. 8 C.F.R. § 204.5(m)(4) requires that each petition for a religious worker must be accompanied by a qualifying job offer from an authorized official of the religious organization at which the alien will be employed in the United States. The official must state the terms of payment for services or other remuneration. In addition, 8 C.F.R. § 204.5(g)(2) requires that the employing religious organization submit documentation to establish that it has had the ability to pay the alien the proffered wage since the filing date of the petition. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

The petitioner indicated that no other applications or petitions had been filed.

In his decision, the Service Center Director stated:

Your organization, a Muslim mosque, proposes to employ the beneficiary as a teacher of religion on a permanent basis. You describe your mosque as having about 637 families as members, and you describe the beneficiary as having been a full-

<sup>2</sup> In response to the request for additional information, the petitioner resubmitted copies of the notarized statements from the six families. We note that the copies are unsigned by the persons making the statements, despite the fact that the copies contain the signature, date and stamp of [REDACTED] a Notary Public, and contain a signature of [REDACTED] attesting to the truth of the statement.

time religion teacher for your mosque since December 2000, working from 3:00 PM to 11:00 PM Monday through Friday. Your mosque has filed at least 150 petitions in [sic] behalf of foreign teachers of religion. .... We simply do not find it credible that your mosque is in a position to employ that number of teachers on a full-time permanent basis.

In a letter dated April 23, 2001, the petitioner stated "about 400 families are members of [REDACTED] which employs at present 37 people and operates an annual budget of \$829,751.00." The petitioner asserts that it can pay the proffered wage as demonstrated by its Form 990, Quarterly Wage and Withholding Statements and W-2's. The petitioner notes that the organization is expanding, and that the more children they teach, the more donations they receive to increase their operating budget. The petitioner has, however, provided conflicting information about its membership, the size of its organization, and the number of its religious teachers.

In a letter dated January 30, 2002 the petitioner notes that it previously mentioned 400 families, whose children are being taught by the organization, and then states that "at present" the "exact" number of families is 637, being taught by 166 teachers. Another letter dated April 18, 2002 states the organization provides instruction to the children of "at least 582 families". The petitioner simultaneously provided a list detailing names and addresses of 582 families and the names of the 134 teachers responsible for providing instruction. According to the record as presented, there were fewer teachers and students in April 2002, than in January 2002. This is at odds with the petitioner's statement that its organization is expanding and requires more teachers. The letter of April 18, 2002 further states that "at present 45 teachers are on our payroll while 128 teachers working for our organization have no social security number, however, our organization is paying them in cash." According to these figures, the petitioner has 173 teachers which is inconsistent with the list it simultaneously provided detailing 134 teachers. The statements further conflict with the petitioner's Form 990 tax documents that from 1997 until 2000 state that it has arrangements to teach children and adults by "40" professional teachers. The 2001 Form 990 leaves a blank space in the sentence, thereby leaving the number of teachers unclear.

The petitioner's January 30, 2002 letter states "since 1993 our organization has filed well over 150 petitions in behalf [sic] of religious workers to whom we offered full time permanent employment." The letter of April 18, 2002 indicates the petitioner filed "about 100" petitions. As discussed earlier, the petitioner provided contradictory information concerning the organization, the number of families being taught, the number of teachers, and the number of petitions it has filed. The petitioner has not adequately established that the needs of the petitioning entity will provide permanent, full-time religious work for the beneficiary in the future. Therefore, the petitioner has not demonstrated that it has extended a valid job offer to the beneficiary.

Discrepancies encountered in the evidence presented call into question in the petitioner's ability to document the requirements under the statute and regulations. The discrepancies in

the petitioner's submissions have not been explained satisfactorily. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988).

In reviewing an immigrant visa petition, the Bureau must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

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.