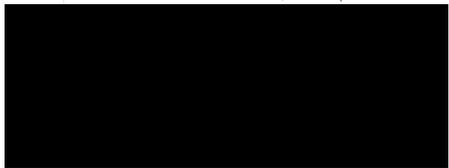


C1

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 01 082 50754

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**

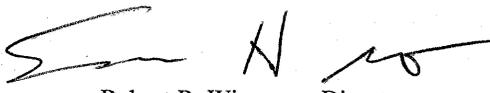
**INSTRUCTIONS:**

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 came before the Administrative Appeals Office (AAO) on appeal. The appeal was summarily dismissed. The matter is now before the AAO on a motion to reopen. The motion will be granted, and the previous decision of the AAO will be affirmed.

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 a "Senior Imam/Khateeb." The director determined that the petitioner had not established that the beneficiary possessed the required two years of qualifying experience as of the filing date of the petition. The director determined that the duties performed in the proposed position are not a traditional religious occupation, requiring special training. The director also found that the petitioner did not extend a valid job offer.

On appeal, the petitioner states that sufficient evidence has been submitted to establish eligibility.

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.

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 January 16, 2001. Therefore, the petitioner must establish that the beneficiary was working continuously as a religious worker from January 17, 1999 until January 16, 2001. The petitioner indicated that the beneficiary last entered the United States on February 10, 1998, 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. Part 4 of the Form I-360 submitted by the petitioner, indicating whether the beneficiary has worked in the United States without permission, also has been left unanswered.

The petitioner submitted a letter dated February 10, 1998, the very date of the beneficiary's alleged entry to the United States, offering "temporary employment" as a "senior Imam and Islamic teacher" at a "salary of \$200(Cash) per week." The record does not document that the beneficiary was tendered any further offer of employment. A letter dated January 11, 2001 from the petitioner states "subject to approval of the petition", the petitioner "will employ the beneficiary full time in a permanent position as an [REDACTED] teacher." The inference is that the beneficiary may have not been employed full-time during the required two year period prior to the petition. The description of the beneficiary's title is inconsistent, calling into question precisely the level of duty the beneficiary has held.

The petitioner's letter of January 2001 indicates that beneficiary is "being paid \$200 (cash) per week for his services." The petitioner stated that the beneficiary works "teaching the children" 40 hours a week, Monday through Friday. The petitioner describes beneficiary's duties as being "responsible for leading the congregation of Jumma Prayer and teaching classes about the Islamic religion as well as the explanation of [REDACTED] and English to the pupils..." The petitioner states that their non-profit religious organization provides "professional religious teachers" to teach Islamic education and Quranic recitation.

This letter also indicates that due to the educational background of the petitioner, he is to be employed as [REDACTED]. The letter states:

He has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy. A detailed description of such duties are as follows: To recite the Quran, render religious discourse, preach and convey religious services on various occasions like birth, marriage and death etc. for members of the Muslim community, and to teach children how to read our Holy Book (Quran).

On appeal, letter dated March 26, 2002, the petitioner writes, "The beneficiary is working full time 40 Hours a week and as a [sic] Imam he is devoting his time one and half hour specially [sic] for Jumma prayer congregation every week he is also teaching the students from 3.00 Pm to 11.00 Pm [sic] Monday to Friday full time 40 hours a week."

Although the record does list some duties of the beneficiary, it does not provide a comprehensive description or schedule of the beneficiary's activities during the two-year period immediately preceding the filing date of the petition. The unsupported assertions contained in the record do not adequately establish that the beneficiary was continuously performing the duties of a qualifying religious vocation or occupation throughout the two-year period immediately preceding the filing date of the petition. The record is muddled regarding the duties of the beneficiary. On the one hand, the petitioner states the beneficiary teaches children 40 hours a week. On the other hand, the petitioner indicates the beneficiary is authorized to perform more in depth religious services and functions, yet provides no further documentation to establish that the beneficiary actually performs additional duties. The petitioner's statement on appeal further reiterates that the beneficiary is primarily involved in teaching students ("full time 40 hours a week") and specifies that the beneficiary devotes one a half hours to Friday prayers above and beyond teaching children. However, the statement on appeal further muddles the issue as it renders an ambiguous statement that the beneficiary works 40 hours full time AND as an Imam works one a half hours and ALSO is teaching children 40 hours a week. It is unclear whether petitioner is implying that the beneficiary works full time in addition to his work with [REDACTED].

[REDACTED] It is unclear how additional religious duties could be performed given the beneficiary's stated schedule. The record contains no documentation to clarify the beneficiary's exact duties on a daily basis. This contradictory documentation is inadequate to determine that the beneficiary is engaged full-time in the capacity of a religious worker.

It is also noted that the petitioner submitted tax forms for the organization and for the beneficiary. As noted above, the petitioner's letters of 1998 and 2001 indicate the beneficiary is being paid \$200 (cash) per week. The record contains a Form 1099-MISC for the year 1999 showing the beneficiary received \$9600.00 for unspecified services. We note that the form is a photocopy of "Copy C for Payer" and has a handwritten tax year in the normally preprinted box. The Form 1099-MISC for 2000 shows \$10,400.00 paid to the beneficiary for unspecified services. On appeal the petitioner also submitted a Form W-2 Wage and Tax Statement 2001 showing payment to the beneficiary of \$10,400. We note that on all tax forms the beneficiary is shown as having a social security number. The petitioner also submitted Quarterly Combined Withholding and Wage Reporting Returns for July 1- September 30,

2000, listing 39 employees<sup>1</sup>; for October 1-December 31, 2000, listing 36 employees; for April 1- June 30, 2001 for 44 employees. The beneficiary is not listed as being an employee on any of these quarterly reports. Furthermore, in response to the Service Center Director's notice of inquiry, the petitioner provided a letter dated November 19, 2001 in which he provided a written "list of our present salaried religious employees, including their occupation and salary paid". The list details "Teachers" and one [REDACTED]. However, the beneficiary is not listed among the employees of the organization. By way of explanation the petitioner states:

Including the beneficiary we have many other religious workers affiliated with our organization. Some are on our payroll while others who 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.

The record is contradictory in that the petitioner claims it cannot add workers to its payroll when they have no social security number, and yet the petitioner has provided forms indicating the beneficiary does have a social security number. It is unclear then why the beneficiary would not be listed as an employee among any of the petitioner's records. The inconsistent record casts doubt concerning the beneficiary's remuneration during the required two year timeframe, and the beneficiary's status as a full-time employee.

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, 591-92 (BIA 1988). On appeal, petitioner has apparently not recognized nor addressed the muddled and inconsistent issues discussed above. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

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

The second issue involves the director's determination that the duties performed in the proposed position are not a traditional religious occupation, requiring special training. 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

---

<sup>1</sup> We note the record contains a second Quarterly Combined Withholding and Wage Reporting Return, dated 9/9/00, for July 1- September 30, 2000, listing 36 employees; as well as a third Quarterly Combined Withholding and Wage Reporting Return, dated 8/14/02, for July 1- September 30, 2000, listing 32 employees. The April 1-June 30, 2000 report likewise has three separate reports, showing 26-28 employees; and the January 1- March 31, 2000 report has three separate reports showing 24-25 employees, none of whom are the beneficiary.

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).

While it is recognized that the title and duties of "Senior Imam" may qualify as a traditional religious occupation, the petitioner failed to demonstrate in this petition that the beneficiary acted in a capacity that might fulfill that stature. As noted above, the petitioner has provided conflicting information concerning the duties and percentages of time the beneficiary has performed various activities. Although the beneficiary held the title of Imam, his stated duties, according to the record, appear to have been primarily teaching children 40 hours per week, rather than performing other duties for which he may have required particular religious training. In a letter dated January 11, 2001, the petitioner states, "That for a Muslim to learn how to recite the Holy Quran in Arabic is the preliminary and basic requirement of Islam. To achieve that object, most of the Muslim community contact us to get their children Quranic recitation and we provide them professional religious teachers." Because of the great emphasis on learning Quranic recitation, it would appear that numerous persons may be qualified to teach recitation. The petitioner has cited authority from the Book of Virtues of the Quran and other sources to highlight the importance of learning the Quran and teaching it to others. While this importance is not disputed, nevertheless the petitioner has not provided documentation of the structure of the religion, the authority which recognizes a particular person as an imam, the level of required learning to achieve that role, documentation concerning who appoints the individual and how they are recognized within the religious body, or other such information that would demonstrate that the beneficiary indeed is recognized as holding a qualifying religious occupation and that he performed a traditional religious occupation that required specialized training.

The petitioner submits that the beneficiary has been teaching the Quran since 1993 in Pakistan. To this fact the record contains a letter dated December 12, 1999 from the Principal of the Educational School for Quran and Hadith in Sialkot, Pakistan, which states that applicant worked as a [REDACTED] from August 1993 to February 8, 1998. The letter does not state that the beneficiary received compensation, nor does it specify his duties in each role, nor his hours of work. The specified dates would appear to conflict with the timeframe during which applicant was obtaining a Bachelor of Arts degree from University of Punjab in Lahore, Pakistan, a secular organization. The beneficiary's Bachelor of Arts from the University of Punjab is dated May 1996.

The petitioner also submitted diplomas further reflecting the beneficiary's education. The record contains copies and translations of an "International Degree in Arabic Language and Islamic Studies" dated May 2, 1993, from the Federation of Salifia Schools in Pakistan, and a "Diploma of Religious and Arabic Language", dated April 8, 1993, from the El-Gheznouiya School of Religious and Arabic Language Studies. The petitioner indicated that the position of religious teacher required the following: a certificate of recitation of the Quran in Arabic from any school; knowledge of Arabic "working of prayers by hear" and how to perform the five times prayers appropriately; knowledge of the ritual performance of funeral prayers and services; knowledge of various prophets and angels; and, a belief in the Quran, the Hadees, the Torah, the Injeel, and the Zaboor. The petitioner added that a senior Imam "should know translation and explanation of Quran Hadith and Fiqa."

8 C.F.R. § 204.5(m)(3)(ii) requires a petitioner for a special immigrant religious worker to show that the alien is qualified in the religious occupation. A petitioner must establish that the beneficiary is qualified as defined in these proceedings. 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.
  - B) That, if the alien is a minister, he or she 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.
  - C) That, if the alien is a religious professional, he or she has at least a United States baccalaureate or its foreign equivalent required for entry into the religious profession. In all professional cases, an official academic record showing that the alien has the required degree must be submitted; or

- D) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother, or that the type of work to be done relates to a traditional religious function.

In this case no certification of ordination, or other evidence establishing by what authority the beneficiary was made an Imam, is included in the record. The petitioner has not explained the standards required to be recognized as a [REDACTED] in its denomination or shown that the beneficiary has satisfied such standard. The petitioner has stated the beneficiary is not a lay minister, but is "highly qualified in religion." The petitioner also stated that the beneficiary is a "minister in Muslim faith" and that he "has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy." The translations pertaining to his religious and Arabic courses do not provide detail concerning the length of the program, the qualifications of the instructors, nor any other documentation to verify his appointment as an Imam. 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). The petitioner notes that beneficiary's Bachelor of Arts degree is equivalent to "2-years college education or 60 credit bonus" from any accredited university in the United States. The petitioner, however, has not provided evidence that a Bachelor of Arts is required for entry into the position. While the title and certain functions of a Senior Imam may be considered a traditional religious occupation, the petitioner has not demonstrated that the beneficiary possesses the qualifications and by what authority. The petitioner has not demonstrated that its position of "Senior Imam/Khateeb" as performed by the beneficiary is a qualifying religious vocation or occupation.

The third issue raised by the director is 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:

The record contains no evidence to indicate that a position for a full-time religious worker exists in your religious organization. It follows, therefore, that no specific religious training beyond that of a dedicated and caring member of the congregation would be required....Further, the record shows that your religious organization has filed numerous petitions for Religious Teachers.

As was noted the earlier, the petitioner submitted a letter dated February 10, 1998 offering the applicant "temporary employment". The record does not document that the beneficiary received any subsequent offers of employment. The petitioner stated on appeal that the "number of its full time employees have [sic] been gradually increasing due to rapidly growing needs of the Muslim Community." However, no additional evidence was submitted to demonstrate the growth of the community nor the specific need for additional full time employees. Although the petitioner noted in the I-360 petition that no other petitions had been filed, the petitioner submitted a list of 160 religious worker petitions it says are pending or have been resolved. Bureau databases indicate the number is significantly higher. As discussed earlier, the petitioner provided contradictory information concerning the beneficiary's duties, remuneration and status as an employee. 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. 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). The petitioner has not demonstrated that it has extended a valid job offer to the beneficiary, or established its ability to pay the beneficiary the proffered wage.

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 decision of the Administrative Appeals Office dated August 14, 2002 is affirmed.