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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE

CIS, AAO, 20 Mass, 3/F

425 I Street N.W.

Washington, D.C. 20536



**DEC 13 2003**

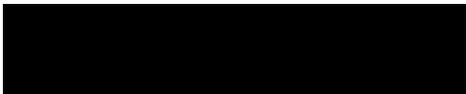
File:



Office: VERMONT SERVICE CENTER

Date:

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:



**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 Citizenship and Immigration Services (CIS) 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.

*Cindy M. Monney for*  
Robert P. Wiemann, Director  
Administrative Appeals Office

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

The petitioner is 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), to employ him as an Islamic religious worker. The director determined that the petitioner had not established that the beneficiary is qualified for the position within the religious organization. The director further determined that the petitioner had not established that it had the ability to pay the beneficiary the proffered salary.

On appeal, counsel submits a brief and additional 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, 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).

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 first issue to be addressed in this proceeding is whether the beneficiary is qualified for the position within the religious organization.

Pursuant to 8 C.F.R. § 204.5(m)(3)(ii)(D), a petitioner for a special immigrant religious worker must show that the alien is qualified in the religious vocation or occupation.

The petitioner's [REDACTED] stated in a letter dated April 23, 2001:

[The beneficiary] has been working as an Islamic (Muslim) Religious Worker at the Office of National Chief Imam, Ghana from 1985 to 1992. Since then he has been devoting and traveling around carrying the messages of Lord Allah. [The beneficiary] is well qualified for the position of an Islamic (Muslim) Religious Worker. . . given his experience and dedication to the Islamic faith.

The author of the letter has not provided any description of the beneficiary's experience in the occupation, nor has he provided any independent evidence to corroborate his statement. Simply going on record without supporting documentary evidence is not sufficient for meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner has also submitted an undated letter from the Office of the National Chief Imam, Ghana. The author of the letter stated that the beneficiary has "good education" in the Islamic faith and "very good hold of religious scriptures and vast experiences [sic]," but he provided no explanation of the training the beneficiary received in order to qualify for the position, the standards the beneficiary was required to satisfy in order to qualify for the position, or any independent evidence to document the beneficiary's experience in the occupation.

On appeal, counsel submits a new letter from the Office of the National Chief Imam, Ghana. The author of the letter states:

Initially, [the beneficiary] joined as a Junior Religious worker and was promoted to full time Religious [worker] in March of 1987. . . . His duties include working as Muslim religious worker, which are based on training he received at the mosque when he served as a junior worker as well as a good education. [The beneficiary] has a very good hold on religious scriptures and has vast experience.

The author of the letter has not provided a description of the training the beneficiary received when he served as a junior religious worker or the beneficiary's education. Additionally, the author did not provide any evidence to corroborate the beneficiary's "vast experience" in the occupation.

The record contains a copy of a diploma from the University of Cape Coast, Cape Coast, Ghana, indicating that the beneficiary had completed the prescribed courses and was thereby awarded a "Diploma in Education". The diploma does not provide any information as to the beneficiary's major area of study, and the petitioner has not provided a copy of the beneficiary's transcripts from that institution or any other evidence setting forth the content of the courses completed by the beneficiary.

The record also contains a copy of the beneficiary's diploma and transcript from Christian Methodist Secondary School in Accra, Ghana. According to the transcript, the beneficiary completed one course in "Religious Knowledge." The record contains no evidence setting forth the content of this course, nor does it contain any evidence to demonstrate that this one course qualified the beneficiary for the position of Islamic religious worker.

The record also contains a letter dated August 23, 2002, from an unidentified official at the Ahyaa-Ideen Islamic School. The author states:

We are one of the main Muslim organization[s] in Ghana and have authority to grant Imam (Priest) education [sic]. We reviewed [the] annexed letter of Mr. Mustapha

Abubakar and state that Mr. [REDACTED] who served with the office of the National Chief Imam as a[n] Islamic (Muslim Religious Worker) from 1985 to 1992 as Religious Worker for all purposes of Muslim Religion. Mr. [REDACTED] duties do relate to the core of Muslim religion. No regular member is allowed to perform the duties performed by [REDACTED]

The author did not give any explanation as to how the beneficiary qualified for the position. Furthermore, the author did not explain how the duties of the position related to the creed of the religious organization, nor did he provide any independent evidence to corroborate the beneficiary's experience in the occupation. The author also failed to submit evidence of his qualifications to provide such statement. It is noted that the beneficiary's occupation is identified as "businessman" in his passport, rather than "imam" or "Islamic religious worker." It is concluded the petitioner has not submitted sufficient evidence to establish that the beneficiary is qualified for the position within the religious organization, and the petition must be denied for this reason.

The second issue raised by the director is whether the petitioner has established that it has the ability to pay the beneficiary the proffered salary.

The director determined that the financial statements contained in the record were not sufficient to demonstrate that the petitioner has the ability to pay the beneficiary the proffered salary.

On appeal, the petitioner states that it has more than 500 members and has sufficient financial resources to pay the beneficiary the proffered salary of \$15,000, "as well as food." The petitioner submitted the following documents:

1. the petitioner's bank statement for the month of March, 2002;
2. the petitioner's property assessment from the Department of Finance of the City of New York;
3. the petitioner's liability insurance policy;
4. the petitioner's financial statements for the year 2000;
5. the petitioner's quarterly financial reports for the year 2000;
6. the petitioner's yearly financial statement for the year 2001; and
7. the petitioner's quarterly financial statement for the period ending March 31, 2002.

Pursuant to 8 C.F.R. § 204.5(g)(2):

Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

The petitioner's bank statement, property assessment, and insurance policy are not sufficient to show that the petitioner has the ability to pay the beneficiary the proffered salary because they do not meet the regulatory requirement. The petitioner's quarterly financial statements and financial statements for the years ending December 31, 2000 and December 31, 2001, are not sufficient to demonstrate the petitioner's ability to pay the proffered salary, because the statements were not audited as required. Therefore, the petitioner has failed to demonstrate that it has the ability to pay the beneficiary the proffered salary, and the petition must also be denied for this reason.

Beyond the decision of the director, the petitioner has not established that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for two years immediately preceding the filing date of the petition. The beneficiary served as a volunteer Islamic religious worker during the two-year qualifying period. Part-time volunteer participation in religious activities does not qualify as work experience in a religious vocation or occupation. Furthermore, the petitioner has not established that the proffered position qualifies as that of a religious worker. The petitioner has not provided sufficient evidence to demonstrate that the position is a traditional religious function within the religious organization; that the duties of the position are directly related to the beliefs of the religious organization; that the position is defined and recognized by the governing body of the religious organization; or that the position is traditionally a full-time, salaried position within the religious organization. Finally, the petitioner has not established that it has extended a valid job offer to the beneficiary. The petitioner has not stated how the beneficiary will be paid or remunerated, nor has the petitioner shown that the beneficiary will not be solely dependent on supplemental employment or solicitation of funds for support. As the appeal will be dismissed on the grounds discussed, these issues will not be addressed further.

In reviewing an immigrant visa petition, the AAO 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.