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

ADMINISTRATIVE APPEALS OFFICE  
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Washington, D.C. 20536



File:

Office: VERMONT SERVICE CENTER

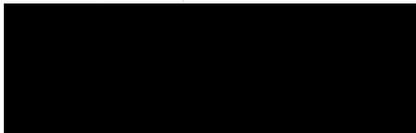
Date: DEC 23 2003

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:



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

**DISCUSSION:** The immigrant visa petition was denied by the Director of the Vermont Service Center. The director subsequently affirmed his previous decision on motion to reopen. The matter 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 imam. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two years immediately preceding the filing date of the petition.

On appeal, counsel asserted that the director violated the petitioner's due process rights because he failed to issue a Notice of Intent to Deny, advising the petitioner of adverse evidence contained in the record of proceedings and providing the petitioner an opportunity to rebut such evidence. Counsel further asserted that the director violated the petitioner's due process rights by denying the petition because the petitioner had not provided evidence that the director had never specifically requested.

On motion, the service center director noted that the beneficiary served as an imam on a voluntary basis during the two-year qualifying period and determined that volunteer work does not constitute qualifying employment for the purpose of classification as a special immigrant religious worker. Therefore, the service center director affirmed his previous decision.

On appeal, counsel asserts that the service center director failed to consider evidence submitted on motion to show that the beneficiary was paid a cash salary during the two-year qualifying period. Counsel asserts that the service center director failed to give any reason why the evidence submitted on motion was insufficient to show that the beneficiary was paid a cash salary during the requisite period. Finally, counsel asserts that neither the statute nor the regulations require that an alien's two years of qualifying experience in the religious vocation or occupation be full-time or salaried.

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).

Pursuant to 8 C.F.R. § 204.5(m)(1) states:

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.

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

several eligibility requirements.

The issue raised by the director is whether the petitioner has submitted sufficient evidence to establish that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two years immediately preceding the filing date of the petition.

The petition was filed on April 19, 2001. Therefore, the petitioner must establish that the beneficiary was engaged continuously in a qualifying religious vocation or occupation from April 19, 1999, to April 19, 2001. The petitioner indicated on Form I-360, Petition for Amerasian, Widow, or Special Immigrant, that the beneficiary last entered the United States on July 21, 1999, as a nonimmigrant J-1 exchange visitor with stay authorized to October 5, 1999. The beneficiary has remained in the United States in unlawful status since that date.

On appeal, counsel asserts that there is no requirement in the statute or the regulations that an alien's two years of qualifying experience be full-time, salaried employment. Counsel submits the text of the testimony of [REDACTED] Consular Officer, Directorate for Visa Services, Department of State, and [REDACTED] former Acting Assistant Commissioner for Adjudications, Immigration & Naturalization Service (now CIS), before the House Judiciary Committee, Subcommittee on Immigration and CLAIMS on June 29, 2000, regarding the nonimmigrant and immigrant religious worker visa programs. Counsel states that both Mr. [REDACTED] and Mr. [REDACTED] confirmed in their testimony that there is no requirement in the statute or the regulation that experience as a religious worker during the qualifying period must be full-time, salaried employment. Nevertheless, the legislative history of the religious worker provision of the Immigration Act of 1990 reflects that a substantial amount of case law has developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision. 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 or 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).

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 minister when he was a fulltime student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

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

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 or 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 fulltime and salaried. To find otherwise would be outside the intent of Congress.

The record shows that the beneficiary served the [REDACTED] of the [REDACTED] Scotland, as an Assistant Imam during the period from February 1999 to July 1999. The petitioner submitted a letter from Muhammad Yasin, director of the mosque and Islamic center, describing the beneficiary's duties and stating that he worked 60 hours a week and was paid 208 [monetary unit unidentified] per week.

Dr. [REDACTED] Assistant Imam of Masjid Abdul Muhsi Khalifah (hereinafter Masjid Khalifah), stated in a letter dated April 12, 2001, that the beneficiary had served the mosque as an imam on a voluntary basis for 25 hours per week since July 1999.

On motion, counsel submitted a letter dated May 1, 2002, from [REDACTED] Principal of the Clara Muhammad School of Masjid Khalifah. Ms. [REDACTED] stated that the beneficiary had worked at the school three days per week since July 1999. She indicated that his salary was \$150 per week.

Counsel also submitted a letter dated May 16, 2002, from [REDACTED] President of the Muslim Student Association of Baruch College, New York, New York, stating that the beneficiary had been

teaching Arabic and Quranic Studies for the Muslim Student Association at Baruch College continuously since the winter term of 2000. No information was provided as to whether the beneficiary worked as a volunteer or was paid a salary for his services.

Finally, counsel submitted a letter dated May 15, 2002, from [redacted] Assistant Imam at Masjid Khalifah, who stated:

This letter is written to clarify our previous letter regarding [the beneficiary's] experience. [The beneficiary] has been working continuously since July 1999 for more than 35 hours a week as an Assistant Imam in our congregation. **Although in our previous letter dated March 13, 2002, we stated that his work was on a volunteer basis, in actuality since July 1999 we have been paying him a stipend of \$600 a month for his services.** (Emphasis added by petitioner.) Although the payment was in cash, [the beneficiary] signed for each payment given at the time he received the money. (We are enclosing copies of the signed payment receipts.)

As a full-time Assistant Imam, [the beneficiary] has been working as follows: leading prayers in the mosque Sundays from 10 AM - 1 PM and Fridays from 1 PM - 3 PM and teaching Islamic Bible studies and Arabic on Mondays, Wednesdays, Thursdays and Fridays from 9 AM to 3 PM. In addition to the time he spends in the classroom and the mosque [redacted] spends 10+ hours preparing his sermons and class curriculum. Therefore, since he has worked weekly 5 hours in the mosque, 24 hours in the school and 10 hours in preparation for sermons and classes he has been employed 39 hours per week on a full-time basis since July 1999.

The petitioner submitted payroll receipt forms signed by the beneficiary and other employees of the mosque, acknowledging receipt of wages for the weeks ending February 1, February 8, February 22, March 8, March 15, March 22, March 29, April 5, April 12, April 19, April 26, May 3, and May 10, 2002. These receipts do not show that the beneficiary was a salaried employee during the requisite period because they were all issued after the two-year qualifying period ending April 19, 2001. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

The petitioner also submitted 35 generic cash receipts for "imam services." These receipts were signed by the beneficiary acknowledging cash payments in the amount of \$600 each for the

period from 1999 to 2002. Twelve of the receipts do not show that the beneficiary was a salaried employee of the mosque during the qualifying period. They are dated after the expiration of the two-year qualifying period. The petitioner has not submitted any independent evidence from the mosque's financial records to verify that the remaining receipts reflect cash payments to the beneficiary for services rendered during the qualifying period.

Furthermore, the petitioner has not provided any explanation for the discrepancy between the original claim that the beneficiary served the mosque as a volunteer imam during the qualifying period and the petitioner's statement on motion that the beneficiary was actually paid \$600 a month in cash for his services as imam during the requisite period. The AAO notes that the petitioner has also revised the stated number of hours the beneficiary worked per week during the qualifying period. The petitioner initially stated that the beneficiary worked part-time, 25 hours per week. On appeal, the petitioner states that the beneficiary worked full-time during the requisite period, at 39 hours per week.

The discrepancies noted call into question the petitioner's ability to document the requirements under the statute and regulations. 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).

Counsel contends that the service center director violated the petitioner's due process rights because the director failed to issue a Notice of Intent to Deny informing the petitioner of adverse evidence contained in the record, and providing the petitioner an opportunity to submit evidence to rebut such information. However, the denial of the petition was not based on adverse evidence contained in the record of proceeding; the record contains no such evidence. The director denied the petition because the beneficiary's work experience as a part-time, volunteer imam during the two-year qualifying period does not constitute qualifying work experience in the religious vocation or occupation.

Although the director did not specifically request additional evidence to establish that the beneficiary was a full-time, salaried religious worker during the requisite period, it is noted that counsel has now had two opportunities, first on motion and again on appeal, to submit any additional evidence she deemed necessary to show that the beneficiary was a full-time, salaried religious worker during the requisite two-year period. The

petitioner has failed to submit such evidence. Therefore, the petitioner has not established that the beneficiary was engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing date of the petition, and the petition must be denied for this reason.

Counsel states that the Board of Alien Labor Certification, United States Department of Labor, has recently found that unpaid experience may be qualifying for the purpose of labor certification. Counsel cites the holding reached in *B&B Residential Facility*, 2001-INA-0146 (July 16, 2002). In that case, the Board of Alien Labor Certification stated that unpaid experience or experience gained working for an employer who sought to avoid labor and tax laws by cash payments may be qualifying if the applicant presents credible supporting documentation of the work and/or corroborating affidavits or declarations of witnesses with personal knowledge. The holding reached in *B&B Residential Facility* dealt with eligibility for labor certification and has no relevance to the facts and issues in this case. Special immigrant religious workers are not required to obtain labor certification, nor are the requirements of the classification subject to Department of Labor determination or review.

Beyond the decision of the director, the petitioner has not established that it has the ability to pay the beneficiary the proffered wage. The petitioner failed to submit annual reports, federal tax returns, or audited financial statements as required under 8 C.F.R. § 204.5(g)(2). As the appeal will be dismissed on the grounds discussed, this issue will not be examined 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.

