

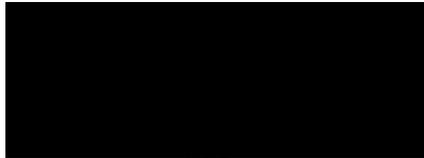
PUBLIC COPY

CI

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

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

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street NW
Washington, DC 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 N. Gomez 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) in order to employ him as an imam.

The director determined that the petitioner had failed to establish that: the proffered position qualified as that of a religious worker; 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 beneficiary was qualified for the position within the religious organization; the petitioner had the ability to pay the beneficiary the proffered wage; and, that the petitioner had extended a valid job offer to the beneficiary.

On appeal, counsel asserts that the director erred in denying the petition because the petitioner provided sufficient evidence to warrant approval 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, 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):

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 first issue raised by the director is whether the proffered occupation qualifies as a religious vocation or occupation.

Pursuant to 8 C.F.R. § 204.5(m)(2), the term "minister" is defined as follows:

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

The petitioner stated that the beneficiary's duties include conducting daily prayer services, presiding at funerals, weddings, and birth ceremonies, and religious instruction. The petitioner described the beneficiary's weekly schedule as follows:

- Monday: 12 noon - 2:00pm and 6:00pm - 8:00pm - Imam in daily prayer sessions. 3:00pm - 6:00pm religious instructions for children aged 7-12.
- Tuesday: 12 noon - 2:00pm and 6:00pm - 8:00pm - Imam in daily prayer sessions. 3:00pm - 6:00pm religious instructions for teenagers aged 13-17.
- Wednesday: 12 noon - 2:00pm and 6:00pm - 8:00pm - Imam in daily prayer sessions. 3:00pm - 6:00pm religious instructions for adults 18 and over.
- Thursday: 12 noon - 2:00pm and 6:00pm - 8:00pm - Imam in prayer sessions. 3:00pm - 6:00pm Islamic etiquette for women.
- Friday: 12:00 noon - 2pm and 6:00pm - 8:00pm Imam in Weekly Jumma prayer Service (holiday) 6:00pm to 9:00pm, Imam in daily prayer sessions.
- Saturday: 10:30am - 3:30pm - to conduct religious readings from Holy Quran (for children)

Sunday: 12 noon - 2:00pm and 6:30pm - 8:30pm - Imam
in prayer service.

The petitioner stated in a letter dated December 4, 2001:

As to whether the job duties are a traditional religious function above those performed routinely by other members of the organization, please note that an Imam is the primary religious functionary in the Muslim Faith. He performs all religious ceremonies in our religion and his position is similar to a priest or minister in the Christian religion.

The duties of the proffered position appear to parallel those normally performed by imams or ministers. The position includes the duties of leading prayer services, presiding at marriage and burial ceremonies, and providing religious instruction to members of the congregation. These job duties constitute traditional religious functions for imams within the Islamic faith. Nevertheless, the petitioner must demonstrate that the position of "imam" qualifies as a religious occupation within the context of the petitioning mosque. In the letter that accompanied the petition, Salem Sukkar, President of the petitioning mosque, stated that the mosque has 40 permanent and 60 regular members. In a letter dated December 4, 2001, Mr. Sukkar stated, "[a]s previously stated, there are currently five members of our mosque." The petitioner had previously indicated the mosque had 40 permanent and 60 regular members, not five as stated in this letter. The petitioner has not provided any explanation for this discrepancy. Doubt cast on any aspect of the petitioner's proof 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, 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. (Comm. 1988).

The petitioner has not provided any evidence to show that the proffered position is traditionally a full-time, salaried position. Therefore, the petitioner has failed to establish that the proffered position constitutes a qualifying religious

vocation or occupation, and the petition must be denied for this reason.

The second issue raised by the director is whether the petitioner has established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

The petition was filed on March 29, 2001. Therefore, the petitioner must show that the beneficiary was engaged continuously in a qualifying religious vocation or occupation from March 29, 1999 until March 29, 2001. On the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, the petitioner indicated that the beneficiary last entered the United States on December 25, 1997, as a nonimmigrant B-2 visitor with stay authorized to January 24, 1998. The beneficiary has remained in the United States in unlawful status since that time. The petitioner also indicates that the beneficiary has never worked in the United States without permission.

The petitioner states that the beneficiary has served the mosque as a full-time imam since December 1, 1998. Salem Sukkar, the President of Irvington Islamic Center, in a letter dated December 4, 2001, stated that the mosque had no salaried employees as of the date of the letter.

The beneficiary stated in a notarized affidavit dated November 26, 2001:

Since the middle [of] 1998 I have been supporting myself through donation I receive from members of the Mosque for rituals and duties which I perform on a volunteer basis. I do not receive any money from the Mosque directly. . . .

I also have a brother who is a US Citizen who also helps me financially whenever he can. I do not pay rent because I live at the Mosque rent free. This is how I have been supporting myself in the United States.

The record also contains the beneficiary's Form G-325A, Biographic Information. The beneficiary indicates in the section entitled "Applicant's Employment Last Five Years" that he has served Irvington Islamic Center as a "volunteer Imam" since December

1998. The beneficiary also indicated that he had held various jobs as an Arabic Teacher in Paterson, New Jersey, during the period from December 1997 to April 1999. The beneficiary's passport identity page indicates his profession as a "WAKFS employee."

On appeal, counsel asserts that there is nothing in the statute or the regulation that states that a religious worker must be paid a salary to perform the duties of the religious vocation or occupation during the two-year qualifying period. 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. 712 (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.

In this case, the beneficiary served as an imam on a voluntary basis during the two-year qualifying period. Additionally, the beneficiary was not solely performing the services of a religious worker. He indicates that he also supported himself by working as an Arabic teacher during the requisite period. The petitioner has not shown that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for two full years immediately preceding the filing date of the petition, and the petition must also be denied for this reason.

The third issue to be addressed in this proceeding is whether the petitioner has shown that the beneficiary is qualified for the position within the religious occupation.

Pursuant to 8 C.F.R. § 204.5(m)(3)(ii)(B), a petition to classify an alien as a minister must be accompanied by a letter from an official of the religious organization in the United States stating that the alien 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.

The record shows that the beneficiary was awarded a diploma in "Propaganda and Religion Fundamentals" by The College of Propaganda and Religion Fundamentals of Al Quds University in Jerusalem, Israel, on June 21, 1984. The petitioner has not provided a copy of the beneficiary's transcripts from that university or any other evidence explaining the content of the courses the beneficiary completed in order to receive his diploma,

nor has the petitioner submitted any evidence showing that this diploma qualified the beneficiary to perform services as an imam.

The petitioner submitted an employment certificate dated January 12, 1997, stating that the beneficiary served Masjid Taraq Ben Zeyad as Chief Imam during the period from 1986 to 1997. The document further states that the beneficiary conducted prayers five times a day and performed all duties of a priest, including presiding over marriage, birth, and death ceremonies.

Finally, the petitioner submitted an identification card issued by "The Administration of WAQF & Islamic Affairs" identifying the beneficiary as an imam. This document is not sufficient to show that the beneficiary is authorized to perform the functions of an imam because the record contains no evidence or information regarding the issuing authority.

The petitioner has not submitted any documentation from an official of the religious organization in the United States setting forth the requirements for the position or how the beneficiary satisfied those requirements, nor does the record contain sufficient evidence to show that the beneficiary is authorized to perform the duties of an imam. In view of the foregoing, it is concluded the petitioner has not submitted sufficient evidence to show that the beneficiary is qualified for the position within the religious organization, and the petition must also be denied for this reason.

The fourth issue to be addressed in this proceeding is whether the petitioner has established that it has the ability to pay the beneficiary the proffered wage.

Pursuant to 8 C.F.R. § 204.5(g)(2):

Ability of prospective employer to pay wage. 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 proffered 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 copies of annual reports, federal tax returns, or audited financial statements.

In this case, the petitioner provided one checking account statement for the month of March, 2001. The petitioner failed to provide copies of its annual reports, federal tax returns, or audited financial statements. Therefore, the petitioner has not met the regulatory requirement, and the petition must also be denied for this reason.

The final issue to be addressed in this proceeding is whether the petitioner has established that it has extended a valid job offer to the beneficiary.

Pursuant to 8 C.F.R. § 204.5(m)(4), 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 this case, the petitioner has specifically stated that the beneficiary will be a salaried employee and will be paid from its checking account. The petitioner has also stated that the beneficiary will not be solely dependent on supplemental employment or solicitation of funds for support. The petitioner has not, however, provided any information as to the salary the beneficiary is to be paid. Furthermore, as previously stated, the petitioning mosque indicates that it has, at most, 60 members. 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 shown that it has extended a valid job offer to the beneficiary, and the petition must also be denied for this reason.

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.