U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

JAN 22 2003

File: [redacted] (EAC 01 178 51426) Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary: [redacted]

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)

IN BEHALF OF PETITIONER:

[redacted]

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 Service 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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a religious Islamic school. 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 a teacher.

The director denied the petition finding that the beneficiary's volunteer work with the petitioner was insufficient to satisfy the requirement that he had been continuously carrying on a religious occupation for at least the two years preceding the filing of the petition.

On appeal, counsel for the petitioner submits a brief and additional documentation.

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).

The petitioner in this matter is an Islamic religious organization. The beneficiary is a native and citizen of Algeria. The petitioner indicated that it has 52 students enrolled in classes from kindergarten through fifth grade. The petitioner seeks to employ the beneficiary as a teacher of Islamic studies and Arabic. The beneficiary last entered the United States in nonimmigrant academic student status (F-1) on July 26, 1999 to pursue a program of studies in architecture.

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

At issue in this proceeding is whether the beneficiary had been continuously carrying on a religious occupation for the two years preceding filing.

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

> 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 24, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least April 24, 1999.

Initially, the petitioner submitted a job offer dated February 9, 2001, from the president of the board of the petitioner school indicating that it was offering to pay the beneficiary $14,400 a year plus health insurance for a full-time teaching position beginning March 1, 2001. The petitioner also provided the Service with a letter from the petitioner's spiritual leader dated December 6, 2000, stating that the beneficiary has been a volunteer teacher at the petitioner school at its Sunday school and summer school in the years 1999 and 2000.

In a response to a request for additional evidence, counsel for the petitioner stated that the beneficiary acquired two years of religious teaching experience before he entered the United States (1995-1997). Counsel for the petitioner also stated that the beneficiary had been teaching religious courses for the petitioner on a voluntary basis since his arrival in the United States in July 1999. Counsel for the petitioner stated that the beneficiary worked as an Imam and teacher in Algeria while pursuing his studies in architecture. Counsel for the petitioner argued that the beneficiary should not be required to show proof that he worked in a paid capacity for the petitioner because his student status precluded him from obtaining work authorization. The petitioner provided the Service with another job offer dated February 8, 2002, for a full-time position beginning May 1, 2002,

contingent upon approval of the instant petition.

The director determined that the petitioner had failed to submit conclusive documentation establishing that the beneficiary has fulfilled the two-year work experience requirements of 8 C.F.R. 204.5(m)(1). The director ruled that undocumented volunteer experience is not sufficient to establish eligibility for this visa classification.

The statute and its implementing regulations require that a beneficiary had been continuously carrying on the religious occupation specified in the petition for the two years preceding filing. The regulations are silent on the question of volunteer work satisfying the requirement. The regulations were drafted in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they may not be salaried in the conventional sense and may not follow a conventional work schedule. The regulations distinguish religious vocations from lay religious occupations. 8 C.F.R. 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. While such persons are not employed *per se* in the conventional sense of salaried employment, they are fully financially supported and maintained by their religious institution and are answerable to that institution. The regulation defines a lay religious occupation, in contrast, in general terms as an activity related to a "traditional religious function." *Id.* Such lay persons are employed in the conventional sense of salaried employment. The regulations recognize this distinction by requiring that in order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of salaried employment and will not be dependent on supplemental employment. *See* 8 C.F.R. 204.5(m)(4). Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, the Service interprets its own regulations to require that, in cases of lay persons seeking to engage in a religious occupation, the prior experience must have been continuous salaried employment in order to qualify as well.

Furthermore, in evaluating a claim of prior work experience, the Service must distinguish between common participation in the religious life of a denomination and engaging continuously in a religious occupation. It is traditional in many religious organizations for members to volunteer a great deal of their time serving on committees, visiting the sick, serving in the choir, teaching children's religion classes, and assisting the ordained ministry without being considered to be carrying on a religious occupation. It is not reasonable to assume that the petitioning religious organization, or any employer, could place the same responsibilities, the same control of time, and the same delegation of duties on an unpaid volunteer as it could on a

salaried employee. For all these reasons, the Service holds that lay persons who perform volunteer activities, especially while also engaged in a secular occupation, are not engaged in a religious occupation and that the voluntary activities do not constitute qualifying work experience for the purpose of an employment-based special immigrant visa petition.

On appeal, counsel for the petitioner submits 38 pages of summary time sheets purporting to document the beneficiary's work schedule with the petitioner.

Evidence provided by the petitioner is inconsistent. Initially, the petitioner indicated that the beneficiary had performed voluntary services for the petitioner, teaching "the subjects of Arabic language and the Holy Qur'an at the Sunday school, (which met on Sundays and twice during the week) and during the summer school programs." [1] On appeal, counsel for the petitioner submits documentation indicating that the beneficiary performed work for the petitioner six and seven days a week throughout the calendar year. Initially, the petitioner indicated that the beneficiary worked three days a week (except during summer session). The petitioner's evidence regarding the beneficiary's work schedule is inconsistent; therefore, it is not credible. 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).

Similarly, the petitioner initially informed the Service that the beneficiary had performed services for it on a strictly voluntary basis. On appeal, counsel for the petitioner submits a letter from the petitioner stating that "[the beneficiary] was staying for free in the residential apartment attached to the Mosque from September 1, 1999 to August 30, 2001." The evidence as to whether the petitioner compensated the beneficiary by providing him with free board is inconsistent.

The petitioner failed to indicate the source of information used to summarize the beneficiary's work schedule in detail, which was provided on appeal. If the beneficiary used a punch card or a time sheet, the petitioner should have provided the Service with the corroborating documentation. If such corroboration exists, it is unclear as to why the petitioner did not provide it to the Service in response to its specific request for timekeeping records establishing the beneficiary's claimed volunteer experience with the petitioner.

In any event, the evidence is clear that the beneficiary has not been paid a salary by the petitioner and the Service interprets

---

[1] See counsel for the petitioner's response to director's request for additional documentation dated April 10, 2002.

its regulations to require that prior experience must have been continuous salaried employment. The evidence indicates that the petitioner's job offers were contingent upon approval of the visa petition. The petitioner stated that the beneficiary had worked on a volunteer basis. Counsel for the petitioner argued that the beneficiary should be exempt from the two-year paid work experience requirement because as a student, he was prohibited from working. The petitioner has failed to overcome the director's objections to approval of the petition.

Beyond the decision of the director, the petitioner has failed to establish that it is a qualifying religious organization as required by 8 C.F.R. 204.5(m)(3). Since the appeal will be dismissed for the reasons stated above, this issue need not be examined further.

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.