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

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



File:

Office: NEBRASKA SERVICE CENTER

Date: **MAR 27 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, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification 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 religious worker. The director determined that the petitioner had not established that he had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition. The director also determined that the petitioner had failed to establish that he had received a valid job offer from a bona fide religious organization or that the organization had the ability to pay the petitioner the proffered wage. Finally, the director determined that the petitioner had not established that he was qualified for a religious worker position within the religious organization, or that the position qualified as that of a religious worker.

On appeal, the petitioner submits a statement.

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.

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 discussed is whether the petitioner 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 May 4, 2001. Therefore, the petitioner must establish that he was working continuously as a religious worker from May 4, 1999 until May 4, 2001. On the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, the petitioner indicated that he was born in Saudi Arabia and that he last entered the United States on September 9, 1996. Bureau records for the Form I-94, Arrival-Departure Record, identification number that he provided, however, indicate that he is a citizen of Jordan, and that he entered the United States as a non-immigrant student (F-1) on January 27, 1993. The record reflects that he has resided in the United States in unlawful status since the expiration of his authorized stay. Part 4 of the Form I-360 submitted by the petitioner indicates that he has never worked in the United States without permission.

In response to a request for additional evidence, the petitioner submitted a letter dated January 16, 2002, in which the "chairman" of the Masjid Saad Foundation of Toledo, Ohio, indicated that the petitioner had been a "Zakah Administrator" with his organization for the last three years. The writer stated that its foundation is an Islamic worship and educational non-profit organization that also boasts an academy, has 500 members, employs 17 people on a full-time basis, and operates with an annual budget of \$450,000. The chairman stated that the petitioner has been employed since March 1, 1999, has been paid, and that his employment has not been voluntary in nature.

In a letter dated March 31, 2001, however, the chairman had stated that the petitioner had performed only "volunteer work during the last three years with the MSF." 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).

In the letter dated January 16, 2002, the chairman indicated the duties of the Zakah Administrator as: performing instructional presentations and teaching all aspects of charity; monitoring the charity program through a computer program; giving instructional feedback; maintaining accurate records and documenting instructional plans; communicating with board members and co-workers; and, attending workshops. The chairman also stated that the petitioner leads prayers during the month of Ramadan, organizes the dinner schedule, and finds the means to obtain the meals for the breaking of the Ramadan fast. The petitioner also was noted as arranging breakfasts and organizing and planning parties for community entertainment. The chairman indicated that the petitioner coordinates and arranges program activities for children, and is responsible for social announcements and visitations to community members regarding births, deaths, illnesses, and other occasions.

In a letter dated April 19, 2001, however, the duties reported by the chairman included only: assisting in leading the community prayer and organizing meals; coordination of children's activities; social announcements; and, arranging sports activities for the men. In this submission, the petitioner also was noted as assisting with the maintenance of the membership roster and follow-ups with member's donation reminders.

Some of the duties identified as performed by the petitioner are comprehensively administrative and clerical in nature, and are not considered to come within the purview of a qualifying religious vocation or occupation. In addition, no delineation of time spent in each duty, or the total time spent on a weekly basis, is included in the record.

On appeal, the petitioner states that he believes that it is in the national interest of the United States to "keep a Muslim religious worker like myself who care [sic] so much for the freedom of this country and more importantly the mental freedom of the future generations of American Muslim youth." The petitioner also cites a few examples of his sense of patriotism and loyalty to the United States. No additional evidence has been submitted on appeal.

In evaluating a claim of prior work experience, the Bureau must distinguish between active participation in the religious life of a denomination and engaging continuously in a religious occupation. It is traditional in many religious organizations for active members to volunteer a great deal of their time serving on committees, visiting the sick, and otherwise serving and assisting the religious organization. Although the record does list some duties of the petitioner, it does not provide a comprehensive description of the petitioner'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 petitioner 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 contains insufficient evidence to establish that the petitioner was paid any wages by the religious organization during the two years immediately preceding the filing date of the petition, nor that the work performed was on other than a volunteer basis. Therefore, the petition must be denied.

The second issue in this proceeding is whether the religious organization has had the ability to pay the petitioner the proffered wage since the filing date of the petition. 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.

In a letter dated April 19, 2001, the chairman of the Masjid Saad Foundation had stated: "Our foundation...would consider him for a full time position with our organization if he becomes eligible for employment." In a letter dated January 16, 2002, however, the chairman stated that the petitioner will be paid \$1,400.00 a month, or \$16,800.00 a year. As the petition was filed on May 4, 2001, the latter statement cannot be considered. 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 has not furnished the foundation's annual reports, federal tax returns, or audited financial statements. The documents submitted do not satisfy the regulatory requirements. The petitioner has not adequately established that the needs of the religious organization will provide permanent, full-time religious work for him in the future. The petitioner has not demonstrated that he has received a valid job offer, or that the religious organization has the ability to pay him the proffered wage. For these additional reasons, the petition may not be approved.

The final issue raised by the director in his decision is that 8 C.F.R. § 204.5(m)(3)(ii)(D) requires a petitioner for a special immigrant religious worker position to show that he is qualified in the religious occupation. In addition, to establish that the job offered is a religious occupation, a petitioner for a special immigrant religious worker must show the religious nature of the work, the religious training required to do the job, and how he has met the training requirements. To establish that the job offered is a religious vocation, a petitioner must show that the job requires the taking of vows or a permanent commitment to a religious life, and that he has taken the requisite vows or made the requisite commitment.

In a letter dated January 16, 2002, the chairman of the Masjid Saad Foundation of Toledo, Ohio, stated that the requirements necessary to be qualified for the position of Zakah Administrator include: memorization and understanding of the verses in the Quran that are relevant to Zakah and charity; understanding of the authenticated sayings of the prophet Muhammad regarding the Zakah and its rules; experience in handling special cases; experience in the use of Donor Perfect computer software; ability to speak the Arabic and English languages fluently; and, being a Muslim. The chairman also indicated that the petitioner has worked closely with the Imam of the Masjid for the last three years and trained successfully to perform the duties of the position. However, no evidence of these assertions is included in the record.

The petitioner has submitted insufficient evidence to establish that the position qualifies as that of a religious worker. The record fails to reflect that the petitioner's activities for the religious organization require any religious training or qualifications. The petitioner has not demonstrated that the position of "Zakah Administrator" is a qualifying religious vocation or occupation, since those duties identified indicate that this position consists of activities normally expected of an active, studied member of a particular religion, rather than a position that would be filled by a salaried employee who completed

training in preparation for a career in religious work. Further, the record fails to reflect that any training obtained by the petitioner qualifies him to assume a religious worker position. The petitioner has not been shown to be qualified to engage in a religious vocation or occupation. For these additional reasons, the petition may not be approved.

Discrepancies encountered in the evidence presented are called 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 appeal is dismissed.