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U.S. Department of Homeland Security

Citizenship and Immigration Services

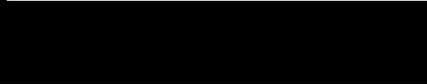
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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, DC 20536



File:  Office: VERMONT SERVICE CENTER

Date: NOV 12 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

**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.

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

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

The petitioner is a religious organization. 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 perform services as an "Islamic Teacher/Minister." In his decision, the director determined that the petitioner had not established that the beneficiary was qualified for a religious worker position within the religious organization.

On appeal, the petitioner submitted a statement. The petitioner resubmitted the 2001 Internal Revenue Service (IRS) Form 990, Return for Organization Exempt from Tax; statements from families whose children the beneficiary is teaching; and copies of the beneficiary's credentials.

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

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 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 petition was filed on March 12, 2001. Therefore, the petitioner must establish that the beneficiary was working continuously as a religious worker from March 12, 1999 until March 12, 2001. The petitioner indicated that the beneficiary last entered the United States on January 10, 1984, but failed to complete the Form I-360, Petition for Amerasian, Widow or Special Immigrant, as it pertained to the beneficiary's current status in the United States. Part 4 of the Form I-360 submitted by the petitioner, indicating whether the beneficiary has worked in the United States without permission, also has been left unanswered.

The sole issue raised by the director to be addressed in this proceeding is whether the petitioner established that the beneficiary is qualified for a religious worker position within the religious organization.

8 C.F.R. § 204.5(m) (3) (ii) requires a petitioner for a special immigrant religious worker to show that the alien is qualified in the religious occupation. A petitioner must establish that the beneficiary is qualified as defined in these proceedings. 8 C.F.R. § 204.5(m) (3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

- A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.
- B) That, if the alien is a minister, he or she 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. In appropriate cases, the certificate of ordination or authorization may be requested.
- C) That, if the alien is a religious professional, he or she has at least a United States baccalaureate or its foreign equivalent required for entry into the religious profession. In all professional cases, an official academic record showing that the alien has the required degree must be submitted; or
- D) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother, or that the type of work to be done relates to a traditional religious function.

The job requirements for the position of a "religious teacher," according to the petitioner's initial letter, include: a "certificate of recitation of Quran in Arabic from any school"; knowledge of the Arabic wording of prayers by heart; knowledge of how to perform the five prayers appropriately; knowledge of funeral prayers; and knowledge of the various prophets, angels, and "belief in the Quran, Hadees, Torah, Injeel and Zaboor."

In this case, the petitioner states that the beneficiary has been teaching the Quran since 1982 in Pakistan. The record contains a letter dated January 10, 1986, from the Darul Uloom Zia-ul-Quran, Saeed Abad (Bokan Sherif) Gujrat, which states that the beneficiary was employed as "Moallum-ul-Quran" from February 19, 1982 until December 31, 1983. The letter indicates that the beneficiary was paid "Rs. 1100/-month." The letter does not specify his duties, hours of work, or provide any further information. The specified dates would appear to conflict with part of the timeframe during which the beneficiary was obtaining a Bachelor of Arts degree in an unstated subject from the University of Punjab in Lahore, Pakistan. The beneficiary's Bachelor of Arts degree is dated June 1982. The transcript indicates that the additional subject of Islamic Studies comprised 100 of the 700 total possible points for the degree. It

cannot be found that the beneficiary primarily majored in religious studies. It is noted that the beneficiary's other training is reflected in a certificate for "the two years Teaching Course of Quran", completed between April 5, 1967 and February 20, 1969, while the beneficiary would have been age five through seven years old.

It is also noted that the petitioner has provided conflicting statements concerning the beneficiary's title and duties. The petitioner's letter dated March 11, 2001, states that the beneficiary is a "professional religious teacher" and "has in total more than 4 years experience in teaching religion to the Muslim community in New York as well as in Pakistan." The letter further states that the beneficiary teaches children 40 hours a week, and "will also lead the congregation in five prayers when required." This letter does not assert that the beneficiary is a minister. In response to the director's request for additional information, however, the petitioner states, in a letter dated June 27, 2002, that the beneficiary has been "working as a professional religious teacher/instructor for the last eleven years abroad and in New York." This letter also states:

The alien is a minister in Muslim faith. He will be solely carrying on the vocation of minister. As already explained above, subject the approval of the petition, our organization will employ the beneficiary in a permanent position as an Islamic religious teacher/instructor. He will work from Monday to Friday, from 3:00 pm to 11:00 pm, 40 hours a week and will be paid a salary of \$200.00 per week ...

In his decision, the director states:

On review, it must be concluded that the evidence of record is insufficient to establish that the beneficiary is a qualified Minister. First, the petitioner has not explained the standards required to be recognized as a minister in its denomination or shown that the beneficiary has satisfied such standard. Second, you did not submit a letter from an authorized official of its denomination verifying the denomination recognition of his credentials as minister ... Third, simply producing documents purported to be certificates of training, which are not based on theological training or education, is not proof that an alien is entitled to perform the duties of a minister. *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978). The petitioner did not describe the beneficiary's theological education qualifying him for ordination ... Furthermore, you did not explain the authority of the church to ordain one of its members as a minister...

On appeal, the petitioner asserts that the beneficiary is "considered as [a] Minister in Muslim faith" and is "duly authorized by our organization to conduct religious worship," and asserts that the beneficiary is not a lay preacher, and that he performs "duties

usually performed by authorized members of the clergy." The appeal further states that the beneficiary is a "religious professional" with a bachelor's degree, and that he is a "religious brother."

The record contains excerpts from religious texts that highlight the importance of learning, reciting and teaching of the Quran. The record, however, does not demonstrate what is required for recognition and acceptance as a "minister" of the Muslim faith. The petitioner has not provided documentation of the structure of the religion, the authority which recognizes a particular person as a minister or other religious worker for that religion, the level of required learning to achieve that role, documentation concerning who appoints the individual and how they are recognized within the religious body, or any other information that would demonstrate the requirements for the religious position and that the beneficiary has fulfilled the requirements.

The record also contains a copy of the beneficiary's passport, issued at New York on March 27, 2002. The passport lists his profession as "Business," and contains no reference to the beneficiary's work as a religious professional.

In this case, the record does not contain a certification of ordination, or other evidence establishing by what authority the beneficiary was recognized as a religious worker. The petitioner has not explained the standards required for recognition as a minister in its denomination or shown that the beneficiary has satisfied such standards. The petitioner has not demonstrated that it has the authority to declare the beneficiary a minister. The petitioner has not provided evidence that a Bachelor of Arts is required for entry into the position. The petitioner, furthermore, has not provided a letter from an authorized official of the religious organization attesting to the beneficiary's fulfillment of the requirements for this position. 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 view of this discussion, the petitioner has not established that the beneficiary is qualified as a religious worker. Therefore, the petition must be denied for this reason.

Beyond the decision of the director, the petitioner has not established that the beneficiary 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 petitioner asserts that the beneficiary has been working with its organization since 1990. Initially and on appeal, the petitioner submitted notarized, but undated, statements from five families indicating that the beneficiary works for, and is paid by, the petitioner, and has been teaching their children since 1990. These statements are inconsistent with the petitioner's response to the request for more evidence. In that response, the petitioner

provides a different affidavit from seven families, attesting that the beneficiary has taught their children since 1990. The list of seven families and the five separate statements share only one family in common. Furthermore, one statement indicates a particular family has four children while the other statement indicates that the same family has five children.

The document listing seven families also states:

We can assure Immigration & Naturalization Service that [REDACTED] will not be publik [sic] charge. We are paying \$20.00 per child per week to [REDACTED]

This statement further contradicts the other affidavits that indicate the petitioner is paying the beneficiary. The contradictory information does not establish that the beneficiary has been continuously engaged as a religious worker for the two years prior to the filing date of the petition.

The petitioner also submits statements, and tax and wage reporting documentation as proof that it has employed the beneficiary continuously for the two years preceding the filing date of the petition, and as proof of its ability to pay the proffered wage. This documentation however, is also contradictory.

The petitioner's March 11, 2001, letter states that the beneficiary has a social security number, is on the organization's payroll and is paid \$300 a week by the petitioner. The petitioner's letter of June 27, 2002, is inconsistent with the March 2001 letter, and is internally inconsistent as well. The June 2002 letter initially states that the beneficiary is on the organization's payroll since January 31, 1998, and states that his Internal Revenue Service (IRS) Form W-2s for 1999, 2000 and 2001, and pay stubs for 2002, are submitted. The same letter later states that the petitioner cannot submit the beneficiary's income tax returns because he "does not have a social security number" and cannot be put on the payroll, but he earns "\$200 (cash)" per week. No explanation is provided for these contradictory statements.

It is noted that the IRS Forms W-2 show the beneficiary as receiving \$15,600 for the year 1999, \$18,000 for the year 2000, and \$8,400 for the year 2001. The petitioner also submitted pay stubs showing payments of \$360.60 for each two-week period beginning December 29, 2001 through June 14, 2002. If this schedule of payments continued through 2002, the salary for the full year would equal approximately \$9,375.60. It is noted that the income for each year reported is not equal to the proffered wage of either \$300 per week, (\$15,600 per year), or, as is stated in other letters in the record, \$200 per week, (\$10,400 per year). This also reflects that the beneficiary has not received a valid job offer, as the discrepancies in salary indicate that the petitioner has not offered the beneficiary full-time permanent employment.

Regarding the tax documents, it is noted that the petitioner submitted an incomplete IRS Form 941, Employer's Quarterly Federal Tax Return, for the quarter ending March 31, 2000. On the partial IRS Form 941, for the period ending December 31, 2000, the beneficiary is not included on page two of the employee listing; page one has not been submitted. The IRS Form 941 for the quarter ending December 31, 2001, is incomplete.

The petitioner also submitted the New York State Department of Taxation and Finance Form NYS-(45)-W, Quarterly Combined Withholding Wage Reporting and Unemployment Insurance Return, for July 1 to September 30 of an unidentified year. The beneficiary is not included in the three-page listing of employees. For the year 2000, the petitioner submitted the New York State Form NYS-45-ATT (W) for the period January 1 to March 31, which shows the beneficiary as having received wages of \$1,200 for the quarter. The petitioner has, however, submitted a second report for the exact same timeframe that lists the beneficiary's quarterly wages as \$1,800.

The petitioner also has submitted two Forms NYS-45-ATT(W) for the period April 1 - June 30, 2000: one report shows the beneficiary received wages of \$1,200, while the other report, for the same quarter, shows wages of \$1,800. The state Form WT-4-B-MN for the period July 1 to September 30, 2000, lists the beneficiary as receiving wages of \$1,200 for the quarter, while a second report for the exact time period indicates wages of \$3,600. The state Form WT-4-B-MN for the period October 1 to December 31, 2000, lists the beneficiary as receiving wages of \$3,600.

The beneficiary's stated income, as reported above, for the year 2000, equals between \$7,200 and \$10,800 yearly, depending on which set of reports is used. We note these totals may conflict with the beneficiary's income as reported on the IRS W-2 form, which indicated wages of \$18,000 for the year 2000. Moreover, the figures conflict with the proffered wage of either \$300 per week, (\$15,600 per year), or, \$200 per week, (\$10,400 per year).

The petitioner has offered no explanation to account for why it has two sets of Quarterly Reports covering the same timeframes, or to account for the variations in the beneficiary's reported wages. As discussed above, these inconsistencies undermine the petitioner's assertion that the beneficiary has received a qualifying job offer in accordance with 8 C.F.R. § 204.5(m)(4), and whether the petitioner has had the ability to pay the beneficiary the proffered wage since the filing date of the petition, in accordance with 8 C.F.R. § 204.5(g)(2).

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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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. *Id.*, 582, 591. On appeal, the petitioner has not recognized nor addressed the inconsistent issues discussed above.

In reviewing an immigrant visa petition, CIS 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.