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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAR 11 2005
WAC 03 039 55286

IN RE: Petitioner: [REDACTED]
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)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Muslim religious and educational organization. It seeks to classify 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 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 full years immediately preceding the filing of the petition or that it had extended a qualifying job offer to the beneficiary.

On appeal, counsel submits 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, 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).

The regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. 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 regulation indicates that the “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 regulation at 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.

The petition was filed on November 15, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as an Imam throughout the two-year period immediately preceding that date.

Present counsel is the third counsel to represent the petitioner in these proceedings. Counsel asserts on appeal that previous counsel failed to explain that the beneficiary worked for the petitioner on a full-time basis and that the proffered employment is for a full-time position.

In its original submission, the petitioner provided no evidence to establish the beneficiary's previous work experience. Although its letter of October 18, 2002 indicated that the beneficiary "has been the [petitioner's] Imam performing many duties and functions," the petitioner did not state when the beneficiary assumed the responsibilities or his work experience prior to doing so.

In a request for evidence (RFE) dated June 12, 2003, the director instructed the petitioner to submit evidence of the beneficiary's work history for the qualifying period, including the duties performed and remuneration or other evidence of financial support if the beneficiary served in a voluntary capacity.

In response, petitioner, now represented by new counsel, submitted a statement from the chairman of its board of trustees, who stated that the petitioner was founded on October 1, 2000. While stating that the beneficiary had served as the petitioner's Imam, the chairman did not specify when the beneficiary assumed that role. In a letter dated May 30, 2003, the president of the petitioner stated that the beneficiary had been the petitioner's Imam since June 20, 2001, and that his duties consisted of leading prayers at least five days a week, delivering the Friday sermon "Khutba," leading the Friday prayers, teaching Islamic classes, providing teaching and educational classes in Arabic, holding weekly classes explaining and providing guidelines on Islam's rules and regulations, participating in developing the petitioner's educational programs and leading Ramadan evening prayers. The president did not specify the beneficiary's hours of work, however in its cover letter, the petitioner's chairman stated that the beneficiary worked 40 hours per week and had held the position since November 2000. Further confusing the issue is the beneficiary's application for membership in the petitioning organization, which reflects that he was accepted as a new member with a "basic" membership on March 1, 2001.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The petitioner submitted copies of the beneficiary's Form W-2, Wage and Tax Statement, which reflect that the petitioner paid him \$10,400 in wages in 2001 and \$15,600 in 2002. The petitioner submitted no evidence of any work performed or compensation received by the beneficiary in the year 2000.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." 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/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).

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).

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

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/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 full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

The director determined that this information regarding the beneficiary's working hours conflicted with other evidence in the record, including a "Labor Condition Application Worksheet" indicating that the position would require a "minimum of 20 hours per week of work" and an employment agreement dated September 1, 2002, and signed by all parties on October 15, 2002. While these documents are wholly relevant in determining whether the petitioner has extended a qualifying job offer to the beneficiary as discussed further below, they are not entirely dispositive in determining whether the beneficiary worked full time in the position prior to the filing of the visa petition. Other evidence in the record may establish this statutory requirement.

However, the petitioner provides insufficient evidence to establish that the beneficiary was engaged in full time employment. In addition to the contract that provides prima facie evidence that the position does not and did not provide full-time employment, the record contains a "Certificate of Enrollment" from the Omdurman Islamic University indicating that the beneficiary was enrolled in the organization's master's program during the academic year 1999/2000. The record does not establish the beginning and ending dates of the academic year or whether or not the beneficiary was enrolled full time.

On appeal, present counsel submits a copy of an employment contract dated April 1, 2001 between the beneficiary and the petitioner, and signed by the parties on April 21, 2001. This contract states that the beneficiary will work 40 hours per week in a full-time capacity. This document lacks credibility for several reasons, including the fact that the date does not correspond to either of the other two dates of employment alleged by the petitioner; it is a two-year contract that predates the 2002 contract (also a two-year contract), which establishes the position as part-time requiring a minimum of only 20 hours per week; and unlike the 2002 contract, the 2001 contract is signed only by the petitioner's board chairman. If Citizenship and Immigration Services (CIS) fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The evidence does not establish that the beneficiary was engaged continuously as an Imam for two full years prior to the filing of the visa petition.

The director also determined that the petitioner had not established that it had extended a qualifying job offer to the beneficiary. The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

As discussed above, the petitioner's last offer of employment reflected that the proffered position constituted part-time employment of a "minimum" of 20 hours per week with a salary of \$1,300 per month. (The 2001 contract sets the salary at \$2,200 per month.) Consistent with the requirements of the U.S. Department of Labor's Bureau of Labor Statistics and other regulations pertaining to employment based visa petitions, CIS holds that employment of less than 35 hours per week is not full-time employment. The petitioner has not established that it will provide permanent full-time employment to the beneficiary. Part-time employment is not a qualifying job offer for the purpose of this employment based visa petition. The record does not clearly establish that the beneficiary will not be dependent upon supplemental employment for his support.

Further, the petitioner indicates in both contracts that the contractual period is for two years. The May 30, 2003 letter from the petitioner's president indicates that the employment period is to expire at the end of June 2005. The Act at section 101(a)(15)(R) excludes from the definition of "immigrant" those aliens who seek to enter the United States for a period of employment for five years or less. Thus, the petitioner's offer of employment to the beneficiary does not meet the requirements for this preference based *immigrant* visa petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.