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FILE: EAC 01 178 50390 Office: VERMONT SERVICE CENTER

Date: **MAR 26 2008**

IN RE: Petitioner:  
Beneficiary:



PETITION: Immigrant 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 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.

*Maura Orendrick*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is identified as a Muslim mosque. 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), purportedly to perform services as a religious teacher. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a religious teacher immediately preceding the filing date of the petition. In addition, the director cited numerous credibility issues arising both from the lack of documentation of the beneficiary's claimed past work and from the large number of similar petitions filed by the petitioner within a short period of time.

On appeal, the director of the petitioning mosque asserts that the beneficiary worked as claimed, and that the rapid growth of the congregation has necessitated substantial growth in the petitioner's teaching staff.

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) 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." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on April 26, 2001. Therefore, the petitioner must establish that the beneficiary was

continuously performing the duties of a religious teacher throughout the two years immediately prior to that date.

In a letter submitted with the initial filing, \_\_\_\_\_ director of the petitioning entity, states:

[The beneficiary] is one of our professional religious teachers. . . .

[The beneficiary has been] one of the members of our organization for two years and has in total more than six years experience in teaching religion to the Muslim community. . . . He works 40 hours a week, Monday to Friday, from 3:00 PM to 11:00 PM. As he has no social security number, we cannot put him on our payroll. However, our organization is paying him \$200.00 (cash) per week. . . .

[M]ost of the community members contact us to provide them [with a] professional religious teacher in their houses, whether a mosque is close to their residence or not. The religious teacher has to teach in a mosque as well as in houses according to the need of the community.

The petitioner submits a copy of its IRS Form 941 Employer's Quarterly Federal Tax Return for the first quarter of 2001. Line 1, "Number of employees," has been left blank. On IRS Form 990, Return of Organization Exempt From Income Tax, the petitioner claims to have paid \$515,800 in salaries and wages during 2000.

The petitioner submits copies of Form W-2 Wage and Tax Statements, indicating that the petitioner paid 40 employees a total of \$488,400 in 2000. This accounts for all but \$27,400 of the wages listed on Form 990 for the same year. The accompanying transmittal form indicates that the petitioner issued 42 Forms W-2 for 2000, showing a total of \$515,800 in wages paid. The two missing Forms W-2 would appear to account for the final \$27,400.

The petitioner submits several letters, purportedly from parents of the beneficiary's students. The letters all follow an identical format, the only variations being names and addresses. The letters indicate when the beneficiary began teaching the children, but there is no indication of the duration or frequency of the lessons.

On January 30, 2002, the director issued a request for evidence instructing the petitioner to submit various types of documentation, including income tax documents showing how the beneficiary has supported himself in the United States.

In response, \_\_\_\_\_ states "each religious worker usually teaches 13-16 children of different families at different localities in New York/New Jersey." Elsewhere, he states "we have at least 582 families" and "more than 150 teachers," indicating that each teacher, on average, teaches four or fewer families. This claim of "more than 150 teachers" as of early 2002 contrasts starkly with the 40 workers identified on the Forms W-2 for 2000. Given the amounts shown on the petitioner's Form 990 for 2000, the petitioner's revenue would have to have increased very substantially between 2000 and 2002 in order to accommodate over 100 additional employees.

While [REDACTED] states that his organization employs “more than 150 teachers,” he also, in the same letter, provides a list of “our present salaried religious employees.” The list consists of only 50 names. The beneficiary’s name is not on the list.

Each of the 50 named individuals is said to earn at least \$200 per week; nine of them each earn between \$250 and \$450. The total weekly payments add up to \$11,100, which is \$577,200 per year. If the petitioner employs an additional 100 teachers beyond these fifty, as [REDACTED] claims, and each teacher receives \$200 per 40-hour week (which is below the legal minimum wage), then the petitioner would require an additional \$1,040,000 per year to pay them. The petitioner also submits a list of 158 special immigrant petitions that it has filed since 1996; all but a few dozen were filed in 2000-2001.

The petitioner submits copies of additional quarterly wage documents. On the forms where the petitioner specified the number of employees, the number varies between 24 and 39. Although [REDACTED] had stated that his 50 listed employees each receive at least \$200 per week, and thus at least \$2,600 per quarter, the quarterly returns indicate that the identified employees rarely received that amount. The return for the third quarter of 1999, for instance, shows 35 employees who each received between \$800 and \$1,800 in gross wages that quarter. Thus, the petitioner’s tax documents, while voluminous, fail to support the petitioner’s claim to maintain a sizeable full-time teaching staff.

With regard to this beneficiary’s experience, [REDACTED] asserts that the parents’ letters, submitted previously, demonstrate the beneficiary’s full-time experience throughout the two-year qualifying period. The petitioner asserts that the beneficiary has taught each family for 2½ hours every weekday. The letters do not contain that information.

The petitioner did not submit tax documents showing the beneficiary’s earnings during the qualifying period. Instead, the petitioner repeats the prior claim that the beneficiary was paid cash because he lacked a Social Security number.

The director denied the petition on August 5, 2002, stating:

Service records indicate that you have recently filed an inordinately high number of petitions for religious positions identical to the offered position on this petition. . . . The legitimate nature of the evidence submitted supporting such filings may be reasonably questioned when adjudicating what appear to be frivolous subsequent filings. . . .

You claim that . . . [t]he beneficiary is not listed on your payroll because he has not been issued a social security number. You state that you have been supporting him through cash payments totaling \$200.00 per week though you did not submit evidence establishing any payments to the beneficiary. . . . Of the numerous 200 [sic; this apparently should read “2000”] Form W-2 (Wage and Tax Statements) you have submitted; your submission did not include a Form W-2 issued to the beneficiary. Your statements issued by the five [sic]

parents of children the beneficiary teaches is not sufficient to establish that he possesses the requisite two-years of continuous work experience prior to your filing. . . .

[I]t is highly unlikely that any comparable organization would require the services of over 100 workers during this time period. When these filings are considered in conjunction with the absence of timekeeping or reported payroll records issued to the beneficiary, it is reasonable to conclude that the beneficiary does not possess the requisite work experience as of the date of filing of this petition. Additionally, the Service is not persuaded that you have the ability or intention to employ the beneficiary given the number of petitions you have filed in such a short time span. As a result, the record is not persuasive in establishing the legitimate nature of the offered position.

On appeal, [REDACTED] states:

The beneficiary is a religious worker . . . and has been working as such since March 8<sup>th</sup>, 1999. Our organization (The petitioner) has been providing religious services, including teaching, since its establishment in 1986. The number of its full time employees has been gradually increasing due to rapidly growing needs of the Muslim Community.

In a separate letter, [REDACTED] once again cites the parents' letters that had accompanied the initial filing. He also claims: "We have hired over 100 teachers according to community demand during the period [of] three years from January 14, 1998 to April 14, 2001." The petitioner submits a copy of its Form 990 for 2001, indicating that the petitioner's total revenue for the year was \$1,985,358, and its total expenses for the year amounted to \$2,044,108. The petitioner reported \$1,884,251 in salaries and wages. By comparison, in 2000 the petitioner had reported only \$829,751 in revenue; \$624,234 in expenses; and \$515,800 in salaries. The petitioner offers no objective, verifiable documentation to corroborate this claim of massive growth.

[REDACTED] claims that teaching students in their homes, rather than at the mosque or some other central location, "is practicable, economical, saving time and easy for the parents, children and teachers." He contends that many parents are unable to transport their children back and forth to the mosque for lessons, and also that there would be "wastage of time to bring the students to our place." These claims are difficult to defend. The petitioner has not explained why it is "economical" to send over a hundred teachers from house to house, teaching each family separately, instead of hiring a smaller teaching staff to provide the same lessons to larger groups at a central location. With respect to the time expended in transporting students to the mosque, an equal amount of time is required to transport teachers from the mosque to a student's home. Additional time is then required for that teacher to travel from one home to the next. The petitioner's claimed system of house-to-house teaching appears, from the information provided, to be highly impractical and time consuming, as well as expensive.

Given the enormous expense of maintaining a large full-time staff to perform work that could be performed part-time by a much smaller staff, the claim that the petitioner employs a massive number of house-to-house teachers appears to be intended to explain the tremendous volume of petitions filed by the petitioner in a very short period of time. The petitioner's assertions in this vein are sorely lacking in credibility.

When considering the petitioner's credibility, additional information bears consideration. On September 22, 2004, ██████████ was convicted in federal court on eight criminal counts of visa fraud and related charges. He was subsequently sentenced to a term of 51 months in prison. A press release from the United States Attorney, Southern District of New York, relates details of the charges:

██████████ was convicted of all eight counts of an Indictment that charged him with conspiring to submit hundreds of false applications on behalf of illegal aliens under the Religious Worker Program . . . and to obtain genuine Social Security cards in false names. ██████████ was also convicted of making false statements to INS agents related to the investigation. . . .

According to the Indictment and as proved at trial, ██████████ filed fraudulent paperwork with the INS for numerous non-religious workers to obtain Religious Worker visas for which the aliens were not eligible in exchange for fees ranging from \$5,000 to \$8,000 in cash. ██████████ also orchestrated a complex fraudulent payroll scheme whereby he issued bogus payroll checks to the applicants on a bi-weekly basis, requiring the illegal aliens to return to him the amount of the check in cash, plus an additional amount that ██████████ told the aliens was required to pay his employer taxes. ██████████ then filed tax returns for the mosque, issued W-2's to the applicants, and required them to file personal tax returns stating that they were employed as religious workers at the mosque. This scheme was operated to further deceive the INS into believing that ██████████ mosque was a large-scale entity with a burgeoning congregations served by ██████████ many religious workers. The Government's evidence at trial showed that ██████████ drastically overstated the operations of his mosque and the size of his congregation.

██████████ fraud conviction, while not the basis for the director's denial, nevertheless serves as proof that the director was entirely justified in doubting the petitioner's claims regarding the size and personnel needs of its congregation.

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence

or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Here, the submitted evidence fails to establish the truth of the petitioner's claims. The tax documents offer no specific evidence that the beneficiary worked for the petitioner as claimed. Because the family letters are virtually identical to one another, it is clear that they derive from a common source of undetermined credibility. Ultimately, the petitioner's claim hinges on the assertions of [REDACTED], who, as explained above, has been convicted and incarcerated on fraud charges directly related to special immigrant religious worker petitions.

When a petitioner is known to have been involved in immigration fraud on a large scale, we cannot ignore that petitioner's inability to provide persuasive evidence in regard to individual petitions. 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. 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, 586 (BIA 1988). 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).

Taking the above factors into account, we cannot find that the petitioner has submitted credible, probative evidence to show that the beneficiary meets the two-year continuous employment requirement. Therefore, the petitioner has not established that the beneficiary qualifies for the classification sought; and there exist very firm grounds for doubting that a *bona fide* job offer exists at all.

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.