U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

C1

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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:

[redacted]

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, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is an Islamic religious association that operates a community center and produces two periodical publications. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as a teacher. The director determined that the petitioner had not established that (1) it has a qualifying tax exemption; (2) the beneficiary had the requisite two years of continuous work experience as a teacher immediately preceding the filing date of the petition; or (3) the position offered to the beneficiary qualifies as a religious occupation.

On appeal, the petitioner submits new documents and a brief from counsel.

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;
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> (ii) seeks to enter the United States--
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> > (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
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> > (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
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> (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 first issue concerns the petitioner's tax exempt status. 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

> (A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or
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> (B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The petitioner is exempt from taxation under section 501(c)(3) of the Internal Revenue Code (IRC), but not all 501(c)(3) exempt organizations are religious. The petitioner must demonstrate that its exemption arises from its religious character.

Documentation from the Internal Revenue Service (IRS) indicates that the petitioner qualifies for exemption as "an organization described in section 509(a)(2) of the Internal Revenue Code." That section, and its subsections, refer to an organization which:

> (A) normally receives more than one-third of its support in each taxable year from any combination of -
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> > (i) gifts, grants, contributions, or membership fees, and
> >
> > (ii) gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity which is not an unrelated trade or business (within the meaning of section 513), not including such receipts from any person, or from any bureau or similar agency of a governmental unit (as described in section 170(c)(1)), in any taxable year to the extent such receipts exceed the greater of $5,000 or 1 percent of the organization's support in such taxable year, from persons other than disqualified persons (as defined in section 4946) with respect to the organization, from governmental units described in section 170(c)(1), or from organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)), and
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> (B) normally receives not more than one-third of its support in each taxable year from the sum of -
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> > (i) gross investment income (as defined in subsection (e)) and
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> > (ii) the excess (if any) of the amount of the unrelated business taxable income (as defined in section 512) over the amount of the tax imposed by section 511.

The director, in denying the petition, asserted that the only qualifying classification of tax exemption is for organizations described under sections 509(a)(1) and 170(b)(1)(A)(i) of the IRC. Therefore, the director concluded, the petitioner, as an organization described as section 509(a)(2), is not tax exempt under the IRC *as it relates to religious organizations.*

The director's interpretation of the regulation is impermissibly narrow, as other provisions of the IRC pertain to religious organizations. The burden remains on the petitioner to demonstrate that its tax exempt status derives primarily from its religious activity. Had this been the sole basis for denial, it would appear that the petitioner should be granted an opportunity to submit further evidence (such as its IRS Form 1023). As it stands, however, such an action would be moot because other valid grounds for denial remain.

The next issue pertains to the beneficiary's experience. 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 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 July 13, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a teacher throughout the two years immediately prior to that date.

The beneficiary entered the United States on March 24, 2001, and therefore she spent much of the qualifying period outside the United States, and the petitioner must produce evidence from a foreign employer to corroborate the overseas employment.

The petitioner's initial submission contained no documentation regarding the beneficiary's previous employment. Therefore, the director instructed the petitioner to submit "evidence that establishes that the beneficiary has the continuous two years full-time experience in the . . . religious work for the period immediately prior to July 13, 2002." The director added "[d]ocumentation to establish the employment dates, training and salary of the beneficiary should consist of more than a statement. Objective documentary evidence, such as payroll records, tax return forms, contracts, etc., should be submitted to confirm the claimed employment dates and compensation for services performed."

In response, the petitioner has submitted a letter from of the Islamic Guidance Center, Brooklyn, New York, who states that the beneficiary "is a non-paid employee she works voluntarily and works 40 hours a week. She started work in April, 2001 through present." The record does not establish what connection, if any, exists between the petitioner (based in Brentwood, New York) and the Islamic Guidance Center (in Brooklyn). This letter covers only 15 to 16 months of the qualifying period.

The director had asked for evidence to show how the beneficiary has supported herself in the United States. ated that the beneficiary has worked as an unpaid volunteer, and nothing else in the petitioner's submission addresses the issue of the beneficiary's financial or material support.

The director denied the petition, in part because the petitioner submitted "no corroborating documentation, which clearly establishes that the beneficiary possessed the required two years of qualifying experience as of the filing date of the petition."

On appeal, the petitioner submits a certificate indicating that the beneficiary taught "Quran with translation, Hadis and Fiqah" at Jamia Khatoon Hannat for six hours a day, four days a week, from November 1, 1999 to February 28, 2001. The petitioner offers no explanation as to why this material was not submitted when the director had earlier issued a specific request for the required evidence. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits some, but not all, of the required evidence on appeal. However, the AAO is under no obligation to consider this evidence. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

The petitioner chose not to make this information available to the director when the director requested it, and the director did not err in finding that, at the time of the decision, such information had not been submitted. Even then, the information consists only of a statement with no documentary corroboration. The petitioner does not explain why this documentation was not submitted prior to the appeal.

Furthermore, the newly submitted statement shows that the beneficiary worked only 24 hours per week at Jamia Khatoon Jannat. Part-time work is not "continuous" for purposes of special immigrant religious worker benefits. *See Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980). The claimed employment ended at least a month before the beneficiary is said to have begun teaching in the United States, and over three weeks before the beneficiary entered the United States. The record does not explain the one- to two-month interruption in the beneficiary's work, which raises further questions about whether the beneficiary's work was "continuous" as the law requires.

Regarding the beneficiary's material support, the appeal includes a sworn affidavit fro who asserts "I am taking care of all her food, residence and other expenses of life," "since she came to U.S.A." We note the lack of corroborating evidence (such as, for example, canceled checks from pay the rent at the beneficiary's residence).

Based on the above, we concur with the director's finding that the petitioner has not shown the beneficiary to have worked continuously as a teacher throughout the two-year period ending July 13, 2002.

The final issue is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) defines a "religious occupation" as an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation at 8 C.F.R. § 204.5(m)(2) states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

Citizenship and Immigration Services therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

on behalf of the petitioner, describes the beneficiary's position:

> Among the religious responsibilities she will perform on behalf of our association are the following:
>
> 1. Teach the Urdu language to the children.
> 2. Teach Islamic History to the children.
> 3. Teach Arabic languages and recitation of the Holy Quran.
> 4. Teach the basic concepts and understanding of Islam to the youth.

of the Islamic Guidance Center states that teachers of Islamic studies "are recognized religious occupations," "according to the shariah (Islamic Jurisprudence)." The petitioner has documented the specialized training that the beneficiary has received, and on appeal the petitioner submits a copy of a March 2001 "Help Wanted" advertisement for the full-time position offered to the beneficiary. The record also shows that the beneficiary was paid for similar work abroad. The available evidence is consistent with the claim that the beneficiary's work is traditionally an occupation within the petitioner's denomination, rather than a duty routinely undertaken by unpaid volunteers. Considering the beneficiary's own unpaid

work, we note that the beneficiary lacked legal employment authorization in the United States, and therefore the fact that she was not paid is not *prima facie* evidence that her type of work is normally unpaid. The petitioner has therefore, on balance, overcome this particular basis for the denial, although the other grounds discussed above still stand.

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.