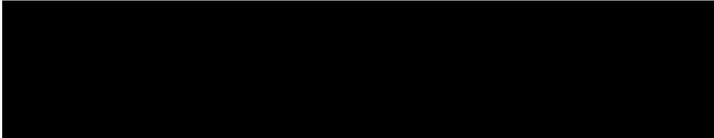


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**U.S. Citizenship
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Services**

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FILE: 
EAC 04 137 50264

Office: VERMONT SERVICE CENTER

Date: MAR 09 2007

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:



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, 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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a Sunni *masjid*, or 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), to perform services as an imam (equivalent to a minister). The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as an imam immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary.

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 . . . 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 2, 2004. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an imam throughout the two years immediately prior to that date.

The petitioner has submitted a letter from [REDACTED], President of [REDACTED], New York, New York, indicating that the beneficiary has been “employed as an imam and a religious advisor by masjid AQSA mosque since January 2, 1996.” Previous submissions are largely consistent with this information, for instance a 2003 document from the Center for Integration and Improvement of Journalism at San Francisco State University that states that the beneficiary “has been the Imam of the Masjid Aqsa for the last six years.” News articles and other materials originating from during the 2002-2004 qualifying period also refer to the beneficiary as an imam, as well as chairman of the Association of African Imams in New York.

The evidence indicates that the beneficiary was an imam at [REDACTED] during the qualifying period. An unresolved question remains, however, regarding this work. By statute and regulation, already quoted above, the beneficiary must be *solely* engaged as a minister. The petitioner must, therefore, establish the means by which the beneficiary supported himself during the qualifying period. If the beneficiary supported himself through outside employment, then he has not been continuously or solely employed as an imam, and therefore cannot qualify for classification as a special immigrant religious worker. See *Matter of Faith Assembly Church*, 19 I&N Dec. 391, 393 (BIA 1986).

Although the director issued a request for evidence on May 3, 2005, that request did not address the issue of the beneficiary's material support during the qualifying period. The director must give the petitioner a final opportunity to establish this support. We note, here, that contemporaneous documentary evidence, such as check stubs, carry substantially greater weight as evidence than letters written years after the fact.

The other issue concerned the nature of the job offer. The director's concern was that, although the petitioner indicated that the beneficiary would work 40 hours per week, the petitioner did not adequately break down those duties into a detailed schedule.

On appeal, the petitioner attempts to provide a more detailed schedule. Of greater concern, we believe, is another aspect of the job offer. Specifically, the site of the proposed employment is not entirely clear. Initially, the petitioner indicated only that the petitioner was to serve "in Harlem, NYC." It is, therefore, not clear whether the petitioner intends for the beneficiary to work at the petitioning mosque or at Aqsa Mosque. This is an important question for reasons we will now explain.

The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner has indicated that the beneficiary will receive "\$200 weekly minimum." The above regulation requires evidence that the "prospective employer" is able to pay the proffered wage. The petitioner must, therefore, establish the identity of the prospective employer. If the beneficiary is to continue working at Aqsa Mosque, then the petitioner must submit annual reports, federal tax returns or audited financial statements establishing that [REDACTED] is able, and has been able since April 2004, to pay the beneficiary \$200 per week. If, on the other hand, the beneficiary is to transfer to the petitioning mosque, then the petitioner must establish its own ability to pay the proffered wage. We note that the petitioner has already submitted what it called an audited financial statement, but this statement begins with a disclaimer that no audit was performed.

Furthermore, 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the prospective employer 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

(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 has submitted appropriate evidence relating to the petitioning mosque. The petitioner has not, however, submitted comparable evidence for Aqsa Mosque. Therefore, if the beneficiary is to work at Aqsa Mosque, the petitioner must submit the required documentation to establish the qualifying tax-exempt status of Aqsa Mosque.

We note that, on appeal, the petitioner refers to Aqsa Mosque as "our affiliate." A pamphlet in the record indicates that the petitioning mosque "has given birth to two other mosques in Harlem," one of which is Aqsa Mosque. The record does not establish the nature or extent of the "affiliation" between the two mosques. The record does not indicate, for instance, whether the petitioning mosque and Aqsa Mosque are incorporated together or separately. This distinction is important because it determines, in part, which entity or entities must provide various types of required evidence. For example, if there is no corporate connection between the petitioner and Aqsa Mosque, but the petitioner is to work at Aqsa Mosque, then evidence pertaining to the petitioner's finances or tax-exempt status would be irrelevant with regard to Aqsa Mosque's tax status or ability to compensate the beneficiary.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.