identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

C1

FILE: WAC 07 183 53354 Office: CALIFORNIA SERVICE CENTER Date: MAY 19 2010

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, 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 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. The director determined that the petitioner had not established that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the visa petition.

Counsel submits a brief and additional documentation in support of the appeal.

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 September 30, 2012, 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 September 30, 2012, 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 issue presented is whether the petitioner has established that the beneficiary worked continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the visa petition.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m) provides that to be eligible for classification as a special immigrant religious worker, the alien must:

> (4) Have been working in one of the positions described in paragraph (m)(2) of this section, either abroad or in lawful immigration status in the United States, and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. The prior religious work need not correspond precisely to the type of work to be performed. A break in the continuity of the work during the preceding two years will not affect eligibility so long as:
>
> (i) The alien was still employed as a religious worker;
>
> (ii) The break did not exceed two years; and
>
> (iii) The nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

Therefore, the petitioner must show that the beneficiary worked in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously for at least the two-year period immediately preceding the filing of the petition. The petition was filed on May 29, 2007. Accordingly, the petitioner must establish that the beneficiary was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

The regulation at 8 C.F.R. § 204.5(m)(11) provides:

> *Evidence relating to the alien's prior employment.* Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work, must have occurred after the age of 14, and if acquired in the United States, must have been authorized under United States immigration law. If the alien was employed in the United States during the two years immediately preceding the filing of the application and:
>
> (i) Received salaried compensation, the petitioner must submit IRS [Internal Revenue Service] documentation that the alien received a salary, such as an IRS Form W-2 [Wage and Tax Statement] or certified copies of income tax returns.
>
> (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.

> (iii) Received no salary but provided for his or her own support, and provided support for any dependents, the petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS.
>
> If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

In its May 7, 2007 letter submitted in support of the petition, the petitioner stated that the beneficiary had worked as a full time imam with the petitioning organization since June 1, 2006. The petitioner further stated:

> [The beneficiary] performs a wide array of religious education and worship services, including five (5) daily prayers seven (7) days a week, at various times during the day . . . including Friday prayers. [He] additionally conducts community language classes, spiritual gatherings, and classes for children and adults offering instructions of Holy Quran, and various worship activities.

The petitioner submitted a copy of the beneficiary's visa, which reflects that he entered the United States on March 1, 2007 as an R-1 nonimmigrant religious worker. The petitioner also submitted copies of IRS Form 941, Employer's Quarterly Federal Tax Return, for the quarters ending September 2006, December 2006 and March 2007, each reflecting that the petitioner paid one employee $4,500 in wages during the quarter. The petitioner further submitted a copy of a February 25, 2007 letter from [redacted], certifying:

> [The beneficiary] was employed as an IMAM (religious Minister) and Arabic Islamic teacher from 1st, September 1989 to November 20, 2002. His monthly salary was Rs. 9620/ and from 1st, November, 2004 to May 8, 2006. His monthly salary was Rs. 11636/ and quarters was also provided to him on [*sic*] free of cost.

In response to the director's request for evidence (RFE) dated June 17, 2008, the petitioner submitted copies of the beneficiary's IRS Forms W-2 for 2006 and 2007, reflecting wages paid of $9,000 and $18,000 respectively, and copies of IRS tax return transcripts for the same years. The petitioner resubmitted the February 2007 letter from [redacted] regarding the beneficiary's employment in India.

The director denied the petition, determining that while the petitioner had submitted sufficient evidence of the beneficiary's qualifying work experience in the United States, it failed to provide sufficient documentation to establish his work outside of the United States. On appeal, counsel asserts that the "totality of the record" prove that the beneficiary was "gainfully employed as an Imam" from May 29, 2005 to June 1, 2006.

In a March 16, 2009 affidavit, the beneficiary stated:

> I was employed by [redacted] in Mubarakpur, UP, India as an Imam and Arabic Islamic teacher from 09/01/1989 to 11/20/2002 and from 11/01/2004 to 05/08/2006. During the years 2004 to 2006, my monthly salary was Rs. 11636/ and I was also provided quarters free of cost as a part of the compensation I was not required to submit any tax returns in India due to income limitations and the nature of my employment.

The petitioner submitted copies of what counsel describes as "life insurance premium payments" that "confirm" the beneficiary's "residence at the school/center in India." However, while these documents appear to be addressed to the beneficiary at [redacted], it is not evidence that he worked at the organization. The petitioner also provided copies of flyers that announce the beneficiary as a speaker or guest at several events. The flyers indicate that the beneficiary was associated with [redacted]; however, the flyers are all dated in 2005 and do not reflect any association with the organization in 2006.

On appeal, the petitioner submits copies of "income tax computation charts" prepared by an accounting firm in India, which indicate that the beneficiary had no tax liability under Indian law during the years 2004 through 2006. Although each of the documents refers to a "salary certificate" as the source of the information regarding the beneficiary's salary, the petitioner did not provide copies of these certificates for the record. The petitioner also submits copies of what counsel states are payroll records for employees of [redacted] for the period December 2004, January 2005, June 2005, January 2006, and April 2006. However, the petitioner provided a certified translation only for the period of June 2005. The remaining documents therefore do not comply with the terms of 8 C.F.R. § 103.2(b)(3), which provides:

> *Translations.* Any document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. Further, even if all of the documents were accompanied by certified translations, they still would not be sufficient to establish the beneficiary's continuous work history as the documentation includes only five months of the over 17 months that the beneficiary stated that he worked for [redacted] Additionally, the beneficiary stated that he worked with [redacted] until May 8, 2006. However, immigration records indicate that he entered the United States on March 1, 2006 and began work for the petitioner on June 1, 2006. The petitioner provided no documentation to explain this apparent discrepancy in the beneficiary's employment. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The regulation at 8 C.F.R. § 204.5(m)(11) provides that if the beneficiary's qualifying work was outside of the United States, the petitioner must submit evidence comparable to income tax documentation such as a IRS Form W-2 or certified tax return. The petitioner submitted documentation indicating that the beneficiary was not required to file a tax return in India. However, it submitted no documentation that is comparable to IRS Form W-2 to indicate that the beneficiary was compensated for his work. Accordingly, the petitioner has failed to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the visa petition.

Beyond the decision of the director, the petitioner has not provided the attestation required by 8 C.F.R. § 103.2(b)(7). Therefore, even if it had overcome the director's ground for denial of the petition, which it has not, the petition still could not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.