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U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

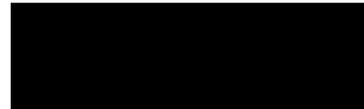


**U.S. Citizenship
and Immigration
Services**



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Date: **APR 02 2012** Office: CALIFORNIA SERVICE CENTER

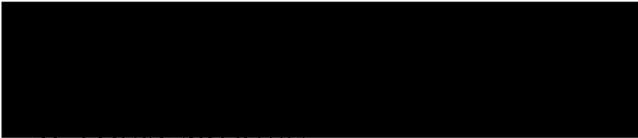


IN RE: Petitioner:
Beneficiary:



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:



ST. LOUIS, MO 63103

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 \$630. 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 Director, California Service Center, denied the employment-based immigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

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 had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition. The director additionally determined that the petitioner did not qualify as a bona fide nonprofit religious organization which was determined to be a tax-exempt organization at the time of filing. Lastly, the director found that the petitioner had not established its ability to compensate the beneficiary.

On appeal, the petitioner submits a brief from counsel, a copy of the I-94 and R-1 visa page from the beneficiary's passport, a copy of the director's decision and copies of various Form I-797 Notices of Action relating to petitions filed on behalf of the beneficiary, signed statements regarding the beneficiary's employment history and the actions of his former employer, Islamic Community Center, Inc. (ICC), a letter from The [REDACTED] in North America, copies of the beneficiary's employment contracts with ICC and the petitioner, a copy of a letter to the petitioner from the Internal Revenue Service, copies of the petitioner's Certificate of Incorporation and Articles of Incorporation, as well as evidence related to the petitioner's ability to compensate the beneficiary. This evidence includes a statement from the petitioner's secretary, materials relating to the petitioner's lease agreement, letters from the petitioner regarding fundraising efforts, its expenses and deposits, and its goal of purchasing a property, bank statements, payment enrollment forms, donation box records, donation receipts, and a lease agreement for the beneficiary's housing.

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 U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the alien has been working as a minister or 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 26, 2010. Therefore, petitioner alien must establish that the beneficiary was continuously performing qualifying religious work in lawful status throughout the two-year period immediately preceding that date.

The USCIS 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 documentation that the alien received a salary, such as an IRS Form W-2 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.

The first issue in this case is whether the beneficiary engaged in unauthorized employment during the two-year qualifying period, thereby failing to maintain lawful status and failing to meet the requirements of 8 C.F.R. §§ 204.5(m)(4) and (11).

According to the evidence submitted with the Form I-360 petition, the beneficiary began working in the United States in 2007 for the [REDACTED]. The beneficiary held R-1 nonimmigrant status which authorized his employment with that organization until January 6, 2009. The petitioner submitted a letter from the [REDACTED] in Utah confirming that it employed the beneficiary as an imam from June 1, 2007 until October 31, 2008. The petitioner also submitted a letter from the Islamic Community Center (ICC) in St. Louis, Missouri stating that the beneficiary began working for the ICC on October 1, 2008. On January 6, 2009, the ICC filed a Form I-129 petition on behalf of the beneficiary which was approved with validity dates of April 14, 2010 to February 6, 2011, but the approval was later revoked on June 11, 2010 because the ICC withdrew the petition. The ICC had also filed a Form I-360 petition on behalf of the beneficiary which allowed the beneficiary to obtain employment authorization with the validity dates of December 10, 2009 to December 10, 2011, but this authorization was also revoked based on the ICC's withdrawal of the underlying petition.

In her decision, the director found that the beneficiary engaged in unauthorized employment with the ICC and therefore determined that the petitioner failed to show that the beneficiary was lawfully working as an imam for at least the two-year period immediately preceding the filing of the petition.

On appeal, counsel for the petitioner argues that the beneficiary's work for the ICC should not be considered unauthorized employment because The [REDACTED] in North America [REDACTED], "the umbrella organization for all Bosniak communities, mosques and Bosniak organizations in North America," should be considered to be the beneficiary's one continuous employer throughout the two-year qualifying period immediately preceding the filing of the petition. A letter from [REDACTED] submitted on appeal, describes its relationships to its member organizations as follows:

Each member organization follows Hanafi School of thought (teaching). All member organizations are under the management of IABNA (Islamic Association of Bosniaks of North America), following IABNA's rules. IABNA decides whether to create or accept a new organization for a certain Bosniak's community in the U.S.

Each member organization employs one or more Imams. IABNA has primary control over Imams' employment, with the exception of paying the compensation, which is paid by the local communities. However, IABNA assigns, approves and transfers Imam among the member organizations.

In her appeal brief, counsel for the petitioner describes this relationship between IABNA and its member organizations and their imams, and then states the following:

For this reason, considering the amount of control IABNA exercises over Beneficiary's employment, IABNA should be considered to have been the Beneficiary's true employer since his arrival in the U.S. in R-1 status, when he was assigned to the [REDACTED] in Utah, then transferred to ICC, and subsequently transferred to Petitioner. As a result, Beneficiary has not worked without authorization, and rather, lawfully worked as a religious worker from the time he first entered the U.S. in R-1 status, on May 28, 2007.

The regulations at 8 C.F.R. §§ 214.2(r)(3)(ii)(E), as were in effect when the beneficiary was approved as an R-1 nonimmigrant, required an authorized official of the organization to provide the "name and location of the specific organizational unit of the religious organization" for which the alien would work. The regulation at 8 C.F.R. § 214.2(r)(6) stated:

Change of employers. A different or additional organizational unit of the religious denomination seeking to employ or engage the services of a religious worker admitted under this section shall file Form I-129 with the appropriate fee ... Any unauthorized change to a new religious organizational unit will constitute a failure to maintain status..."

Further, the regulation at 8 C.F.R. § 214.1(e) provides that a nonimmigrant may engage only in such employment as has been authorized. Any unlawful employment by a nonimmigrant constitutes a failure to maintain status.

In this instance, the beneficiary's R-1 status only authorized his employment with the named employer, [REDACTED] in Utah. Regardless of IABNA's role in governing that organization, the beneficiary was not authorized to engage in employment with IABNA or any of its other member organizations without first obtaining authorization through a separate Form I-129 petition. Therefore, the AAO agrees with the director's determination that the petitioner has failed to establish that the beneficiary has the requisite two years of lawful qualifying work experience immediately preceding the filing of the petition.

In her appeal brief, counsel alternately argues that the beneficiary relied on false assurances regarding his immigration status made by the president of the ICC, causing him to unintentionally engage in unauthorized employment which should not be counted against him. Counsel states:

Had ICC timely filed a petition to extend Beneficiary's R-1 status and to change employers, and not repeatedly informed and persuaded Beneficiary that he was authorized to work at ICC while the I-129 petition was pending, Beneficiary would not have begun working for ICC.... Beneficiary and the ICC Board of Directors were forced to rely upon the advice of Imam Hasic, an attorney and religious leader. They trusted his judgment and when they became suspicious of the procedures followed, were repeatedly prevented from resolving the situation. Beneficiary engaged in employment which was not authorized because of the malfeasance of

██████████, as president of ICC.... For that reason, Beneficiary's purported unauthorized employment should not be considered as a negative factor in this petition.

In support of this argument, the petitioner has submitted signed statements from the beneficiary and from several former board members of the ICC who are now members of the petitioning organization. These statements describe the purportedly false assurances made by ██████████ president of the ICC, as well as his efforts to prevent the beneficiary and the board members from trying to rectify the situation. The statements also stress that the beneficiary did not knowingly or intentionally violate immigration law.

The regulation at 8 C.F.R. § 204.5(m)(4) requires that the beneficiary must have been in lawful immigration status during the qualifying period and the regulation at 8 C.F.R. § 204.5(m)(11) requires that the beneficiary's employment in the United States during that time must have been authorized under immigration law. The regulations make no provision for any exception to these requirements and the AAO does not have authority under the Act or the regulations to make such an exception.

In the decision denying the Form I-360 petition, the director also determined that the petitioner did not qualify as a bona fide nonprofit religious organization which was determined to be a tax-exempt organization at the time of filing. The regulation at 8 C.F.R. § 204.5(m)(8) states:

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or
- (iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, as something other than a religious organization:
 - (A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;

(B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;

(C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and

(D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

As stated above, the petition was filed on May 26, 2010. Accompanying the Form I-360 petition, the petitioner submitted a copy of a letter from the IRS, dated May 19, 2010, acknowledging receipt of the petitioner's Form 1023 application for exemption from federal income tax under section 501(c)(3). The petitioner also included a copy of the application. The letter from the IRS indicated that the application was undergoing initial review, therefore the director found the evidence insufficient to establish that the petitioner had a valid determination letter establishing that the organization was a tax-exempt organization at the time the petition was filed.

On appeal, the petitioner submits a letter from the IRS, dated May 21, 2010, confirming that the petitioner is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code. The petitioner, through counsel, explains that the determination letter, although dated prior to filing, was received by the petitioner after the petition was filed.

The AAO finds that the petitioner has established that it qualifies as a bona fide nonprofit religious organization which was determined to be a tax-exempt organization at the time of filing. Therefore, the AAO withdraws the director's determination with regard to that issue.

The final issue to be discussed in this case is whether the petitioner has established that it has the ability to compensate the beneficiary. The regulation at 8 C.F.R. § 204.5(m)(10) states:

Evidence relating to compensation. Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

On the Form I-360 petition, the petitioner indicated that the beneficiary would be paid a base salary of \$1,750 per month. The petitioner also stated that it would provide free housing for the beneficiary until December 31, 2010, after which time it would provide him with a \$750 per month housing allowance. According to the evidence accompanying the petition, the petitioning entity was incorporated on February 25, 2010. In a letter dated May 20, the petitioner stated that it leased space at a rate of \$1,500 per month. The petitioner also stated it had 100 members with membership fees of \$100 per year for individuals and \$200 for families, and received \$630 per month in member contributions. As evidence of its ability to compensate the beneficiary, the petitioner submitted an online bank account statement dated May 20, 2010 showing a balance of \$9,811.24, as well as a copy of its Form 1023 application for tax exempt status and a detailed "Fundraising Plan" prepared by its president. The petitioner also indicated that it was interested in purchasing a property and submitted a "proposed sales contract" and other evidence regarding the property with a listed price of \$1,750,000.

In denying the petition, the director acknowledged the petitioner's recent formation as an explanation for the lack of IRS documentation or evidence of past compensation. Although the director stated that the increasing balance on the bank statement "could be an indicator that the organization is increasing its revenue," she went on to conclude that the evidence submitted was "insufficient to illustrate a consistent and continued means of income." The director also stated that, given the petitioner's stated intent to purchase a new property, it was unclear whether the income from members would in fact be used to compensate the beneficiary. The director therefore found that the petitioner had failed to provide verifiable evidence of how it intended to compensate the beneficiary.

On appeal, the petitioner reaffirms its intention to pay the beneficiary a starting salary of \$1,750 per month plus free housing until the end of 2010 and an extra \$750 monthly housing allowance thereafter. In a letter regarding the proposed property purchase, the petitioner asserts that it will conduct separate fundraising designated solely for the purchase of the property and that securing an imam for the mosque is the petitioner's first priority. The petitioner asserts that its only regular expenses are rent, cell phone payments and bank fees, totaling \$1,555 per month. In a letter dated July 12, 2010, the petitioner states that it is not currently paying the beneficiary "pending his immigration status review." The petitioner submits copies of "ACH Payment Enrollment Forms" which authorize the petitioner to make reoccurring monthly debits of a specified amount from the accounts of various members. These forms, along with statements from the petitioner's bank, show that, as of June, 2010, the petitioner was receiving monthly member contributions totaling \$1,010 through this method, up from \$480 in March, 2010. The petitioner additionally submits "Donation Box" records for April 2010 through July, 2010, indicating additional donations totaling between \$408 and \$664 per month. The petitioner provides letters describing two fundraising campaigns, one of which raised \$8,192 in May, 2010 and the other \$10,821 in July, 2010, and the petitioner provides bank records showing corresponding deposits for these amounts.

As evidence of its ability to provide the beneficiary's housing, the petitioner submits a copy of a lease agreement between the mosque and one of its members showing that the member is leasing

the property to the mosque as a monthly donation valued at \$750. The petitioner also resubmits its Fundraising Plan. In a letter and through counsel in the brief, the petitioner asserts that, since March, it has raised over half of the \$54,200 target to be raised in 2010 according to its Fundraising Plan. Counsel argues that the petitioner has established, by the preponderance of the evidence, that it has the ability to compensate the beneficiary.

As stated above, the director acknowledged in her decision that the evidence could indicate growth in the petitioner's revenue, but determined that the evidence submitted was not enough to show consistent and continuing income. The additional evidence submitted by the petitioner on appeal shows continued growth in its revenue which is consistent with its projected budgets providing for the beneficiary's compensation. Therefore, the AAO finds that the petitioner has established its ability to compensate the beneficiary and withdraws the director's finding regarding the ability to compensate.

Because the petitioner has not established that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition, the AAO will affirm the director's decision to deny the petition.

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.