U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Citizenship and Immigration Services

C1

[redacted]

DATE: JAN 12 2012 OFFICE: CALIFORNIA SERVICE CENTER FILE: [redacted]

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 $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 petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is a Sunni Islamic school. 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 a Quran and Islamic Studies teacher. The director determined that the petitioner had not abided by the terms of its employment agreement with the beneficiary. The director also found discrepancies in the petitioner's documentation.

On appeal, the petitioner submits a brief from counsel with supporting exhibits.

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 first stated ground for denial concerns the beneficiary's intended compensation. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(10) reads:

> *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 [Internal Revenue Service] 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.

The petitioner filed the Form I-360 petition on April 19, 2010. On the accompanying employer attestation, asked to describe "the proposed salaried and/or non-salaried compensation," the petitioner stated that the beneficiary would receive a "$35000.00 Annual Gross Salary." The petitioner submitted copies of IRS Form W-2 Wage and Tax Statements, indicating that the petitioner paid the beneficiary $7,500.00 in 2007, $31,666.68 in 2008 and $35,000.04 in 2009. Social Security Administration records confirm these figures. A contract in the record shows that the $35,000 rate was effective September 1, 2008, before which the beneficiary received a lower rate of pay ($2,500.00 per month instead of $2,916.67). Copies of processed checks, with accompanying bank records, show payments to the beneficiary in the early months of 2010, leading up to the April 19 filing date.

The petitioner's bank statements from late 2009 and early 2010 showed balances that usually exceeded $100,000 and sometimes reached $200,000.

The petitioner also submitted a copy of the beneficiary's employment contract, effective September 1, 2008. The contract indicated that the petitioner would pay the beneficiary "a gross salary of **$35,000.00** per year" (emphasis in original). The contract also indicated: "The Employer will provide a group health plan as applicable, The Employer will contribute the entire plan premium for the Employee alone on a single plan or 50% of the entire plan premium on a family plan and the employee will provide the remainder of the health plan premium for the coverage chosen by the employee." The initial evidence did not identify the "group health plan" or include any evidence of enrollment.

On October 13, 2010, the director issued a request for evidence (RFE). Among other concerns, the director quoted from the employment contract and instructed the petitioner to "[p]rovide evidence that the petitioner has enrolled the beneficiary in a health plan as explained in the contract. . . . Please provide evidence that the petitioner is subsidizing the cost [of] the beneficiary's health plan."

In response, [redacted] director of the petitioning entity, stated:

> Please be advised that although the beneficiary's contract submitted to you has an item indicating that health care will be provided to the employee, this item has not been activated yet. We are looking for a suitable plan that fits both the employees and the Institute's budget. This item is kept in the contract despite the fact that it is not activated yet to guarantee the employee's right to demand it whenever he wants. Out of his faith in the institute's mission, the employee has kindly understood and consented [to] the delay in applying this item.

> However, the above does not deny the right of the employee to demand this benefit at any time, which makes it binding on the Institute to provide it to him immediately at any cost. Indeed, we are considering some health care deals and we are close to choosing one. Health care coverage is expected to be provided by the Institute soon.

The director denied the petition on December 28, 2010, in part because "[t]he petitioner has not fulfilled this contractual obligation over two years from the commencement of the contract."

On appeal, counsel states: "The employer conceded that the health care group plan has not been implemented to the full extent. However, it plans to have this plan implemented in the near future." Later in the same appellate statement, counsel claims: "The employer has established a plan and the beneficiary will be eligible to participate in it whenever he is authorized to accept employment. The beneficiary's R-1 status has expired and [he] is no longer employed by the petitioner." Counsel does not identify the health plan or submit evidence that the petitioner "has established" it. Counsel also asserts that, although the petitioner has not provided the petitioner with formal health insurance coverage, the bank documents in the record show that "the petitioner has demonstrated its financial ability to provide such a plan."

In a later supplement to the appeal, the petitioner submits evidence that the petitioner purchased health coverage for the beneficiary through [redacted] effective January 1, 2011. The USCIS regulation at 8 C.F.R. § 103.2(b)(1) requires the petitioner to establish eligibility at the time of filing the petition. Under the regulation at 8 C.F.R. § 103.2(b)(12), the petitioner's response to a request for evidence must, likewise, establish eligibility as of the filing date. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). The petitioner's purchase of health coverage for the beneficiary in January 2011 – after the director had already denied the petition – does not retroactively rebut the basis for denial of the petition.

Counsel argues that "the employer promised to pay health insurance benefits *as applicable*. The benefit of health insurance is not unconditional. It is payable to the beneficiary whenever the employer has such an active plan" (counsel's emphasis). The assertion that the health insurance clause was not "applicable" because the petitioner had not yet enrolled in a plan is not persuasive. Likewise, counsel's argument that the petitioner was clearly able to afford the coverage is beside the point. The issue is not the petitioner's ability, but its intention, to provide the promised coverage. At the time of the denial, the coverage still had not materialized, and the timing of the enrollment suggests that the petitioner enrolled only in response to USCIS's concerns.

The petitioner's underlying credibility is the focus of the director's second basis for denial. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). 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. *Id.* at 582, 591-92.

The director identified five discrepancies in the petitioner's claims and evidence. The employer attestation included with the Form I-360 petition indicated that the petitioner had a total of six employees in five different positions, with the following titles and responsibilities:

Director	Administration, Representative, Lead board meetings, Human resource
Secretary	Receptionist, Handling phone calls, Arrange schedules and meetings, Booking flights
Quran Teacher	Teaching (Quran, Tajweed rules & Tafser), Leading prayers, Delivering Friday Ceremony and lectures
Quran & Arabic Teacher	Teaching Quran and Arabic language, Preparing [A]rabic curriculums, Leading prayers
Islamic Studies Teacher	Teaching Islamic studies, Preparing Islamic studies curriculums & activities, delivering Islamic speeches

Asked for a "[d]etailed description of the alien's proposed daily duties" as a "Full-time Quran and Islamic Studies Teacher," the petitioner listed four functions:

- Teaching Quran to kids and adults
- Teaching Tajweed (Quran Recitation Rules) to kids and Adults
- Teaching Islamic Studies
- Preparing study books/materials for Islamic Studies

The director's October 2010 RFE included requests for copies of the petitioner's IRS Form 990 Returns of Organization Exempt from Income Tax for 2008 and 2009, recent quarterly income tax returns, "a list of the paid personnel" at the petitioning organization, and documentation relating to the petitioner's work as a teacher. The petitioner's response included the identified documents. The petitioner's IRS Forms 990 for 2008 (dated March 9, 2009) and for 2009 (dated June 4, 2010) contained the following information:

Year	2008	2009
Total number of employees	6	6
Salaries, other compensation, employee benefits	$125,723	$165,898
The above total comprises the sum of:		
Compensation of current officers, etc.	$46,000	$50,000
Other salaries and wages	$69,966	$103,925
Payroll taxes	$9,757	$11,973
Contractual employees	$28,994	$82,565

In a letter dated November 5, 2011 (*sic*; should read 2010), [redacted] stated that "the beneficiary is the only one who occupies the position of a 'Full-time Quran and Islamic Studies Teacher' in the

Institute. There is no other staff in [a] similar position." In this way, [redacted] distinguished the beneficiary's position as a "Quran and Islamic Studies Teacher" from the similarly, but not identically, named positions of "Quran Teacher," "Quran and Arabic Teacher" and "Islamic Studies Teacher." In another letter, also misdated November 5, 2011, [redacted] provided a new list of the beneficiary's duties, consistent with the initial list but containing additional elements:

- Teaching Quran.
- Teaching Tajweed (Quran Recitation Rules) as part of the Quran class.
- Teaching Islamic Studies.
- Monitoring and teaching studies [*sic*] while observing the Afternoon Prayer and Morning Supplications.
- Evaluating and selecting published Islamic studies Curriculum for all the programs of the Institute.
- Developing study books/materials for Islamic studies.

[redacted] also stated: [redacted] is under construction; so we currently have no Imam (ministers) now. A total number of 6 full time staff work for the institute." A list of "Full Time Staff Positions" included the following information:

NAME	POSITION	DUTIES
[redacted]	Director	Administration, representative, lead board meetings, human resources
[The beneficiary]	Full-Time Quran and Islamic Studies Teacher	• Teaching Quran & Tajweed (rules of Quran recitation). • Teaching Islamic Studies. • Monitoring and teaching students during prayer time. • Developing study books/materials for Islamic studies. • Evaluating and selecting published Islamic Studies curriculum for all the Institute programs.
[redacted]	Full-Time Quran and Arabic Teacher	• Teaching Quran. • Teaching Arabic as used in the Quran. • Developing Arabic curriculums. • Delivering lectures and leading Prayers.
[redacted]	[redacted]	• Establishing and applying the school policies and procedures. • Developing school plans and organizational procedures for the health, safety, discipline and conduct of students • Responsible for setting up training workshops and staff meetings. • Providing instructional leadership that will ensure integration of the Quran and curriculum and provide cooperation between all curricular

		areas. • Tracking tuition payments
[redacted]	Secretary	Receptionist, handling phone calls, arranging schedules and meetings, booking flights.
[redacted]	Full-Time Quran Teacher	• Teaching Quran & Tajweed (rules of Quran recitation) • Leading prayers • Delivering lectures.

Copies of the petitioner's Michigan quarterly wage detail reports from the second quarter of 2008 (Q2 08) through the third quarter of 2010 (Q3 10) list the following employees and earnings:

EMPLOYEE NAME	EARNINGS PER QUARTER (rounded to nearest dollar)									
	Q2 08	Q3 08	Q4 08	Q1 09	Q2 09	Q3 09	Q4 09	Q1 10	Q2 10	Q3 10
The beneficiary	7,500	7,917	8,750	8,750	8,750	8,750	8,750	8,750	8,750	8,750
[redacted]	12,000	12,000	10,000	12,000	8,000	15,000	15,000	15,000	15,000	15,000
	1,200	400								
	6,600	6,600	7,199	7,500	7,500	7,500	7,500	7,500	7,500	7,500
			5,000	2,500				7,725	7,725	7,725
			2,700	3,030	2,145					
				7,500	7,500	7,500	8,750	8,750	8,750	5,833
								2,500	3,820	7,500
										1,591

The petitioner also submitted copies of four "Final Report Cards" for the 2009-2010 school year, and six "Student Progress Reports" for September-October 2010. The documents list the following subjects and teachers:

SUBJECT	INSTRUCTOR (2009-2010)	TEACHER (Fall 2010)
Quran	The beneficiary [redacted]	The beneficiary [redacted]
Arabic	[redacted]	[redacted]
Islamic Studies	The beneficiary	The beneficiary
Language Arts	[redacted]	[redacted]
Social Studies	[redacted]	[redacted]
Math	[redacted]	[redacted]
Science	[redacted]	[redacted]
Gym	[none listed]	[redacted]

In the denial notice, the director cited four discrepancies (summarized below) in the above information:

- The petitioner's employee list identified [redacted] as a secretary, with strictly secretarial/administrative duties. The 2009-2010 report cards, however, identified her as an instructor in language arts, social studies and math. The 2010 progress reports identified her as a gym teacher.
- The employee list identified [redacted] as the school principal, with no teaching duties, but the 2009-2010 report cards indicate that she taught language arts and social studies.
- On the IRS Forms 990 for 2008 and 2009, the employer attestation executed in early 2010, the petitioner consistently claimed six employees. The same number of names appears on the late-2010 "Full Time Staff Positions" list, which would indicate that all of the petitioner's employees are full-time. The fall 2010 progress reports, however, identify three additional teachers whose names do not appear on the employee list or any of the quarterly wage reports.
- The "Full Time Staff Positions" list did not name [redacted] or specify his title, but his name appeared on several quarterly wage detail reports.

The AAO notes that the director's observation regarding [redacted] is not a discrepancy on its face. Three of the four most recent quarterly wage detail reports in the record showed that the employee received payments totaling $8,750.01 per quarter. The report for the third quarter (July-September) of 2010, however, shows that he received only $5,833.34. This amount is two-thirds of the amount paid in each of the preceding quarters. The reduced amount is consistent with the employee having worked only two of the three months during that quarter, and with counsel's assertion on appeal that [redacted] left the petitioning entity during that quarter. If the employee left during the third quarter of 2010, then his name would not appear on a list of current employees prepared in November 2010. Even setting aside the director's concerns regarding [redacted], the other discrepancies remain.

On appeal, counsel asserts that the petitioner "was not provided any opportunity to explain these inconsistencies" before the director denied the petition. The USCIS regulation at 8 C.F.R. § 103.2(b)(16)(i) requires USCIS to notify the petitioner of "derogatory information considered by the Service and of which the applicant or petitioner is unaware." Most of the discrepancies cited by the director appeared in the petitioner's own submissions, and therefore do not amount to derogatory information of which the petitioner was unaware.

Counsel cites "an abundance of case law explaining the role of inconsistencies on claims for asylum. . . . A common theme in these cases appears to be that inconsistencies must be relevant and must go to the heart of the underlying application." Counsel maintains that the inconsistencies in the present proceeding do not rise to that level.

Counsel acknowledges that the cited case law pertained to a different case type. The distinction is not a superficial one. USCIS revised its regulations for special immigrant religious workers effective

November 26, 2008. 73 Fed. Reg. 72276 (Nov. 26, 2008). In section 2(b) of the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391 (Oct. 10, 2008), Congress had ordered USCIS to "issue final regulations to eliminate or reduce fraud related to the granting of special immigrant status for special immigrants," "[n]ot later than 30 days after the date of the enactment of this Act." The stated purpose "to eliminate or reduce fraud," and the urgent requirement to issue new regulations quickly after enactment, demonstrate that fighting fraud is a major priority. In this context, it is entirely proper and relevant to consider whom the petitioner employs, and in what capacity.

The regulation at 8 C.F.R. § 204.5(m)(7)(iii) requires the petitioner to attest to "[t]he number of employees who work at the same location where the beneficiary will be employed and a summary of the type of responsibilities of those employees. USCIS may request a list of all employees, their titles, and a brief description of their duties at its discretion." Failure to provide accurate information in this respect is a legitimate ground for denial of the petition, and conflicting claims in this regard are, by definition, inaccurate information.

Counsel states that "the employer is a small religious school with a relatively small number of employees who are often given different tasks. Such an arrangement allows employees to have multiple job duties with different titles." In the subsequent brief, counsel modified this explanation, asserting that the duties of the employees had changed between the preparation of the various lists.

On appeal, [redacted] states: "In addition to my main position as the Principal of the [petitioning] school, i also teach and tutor the English and Social Studies classes for the School students for about 3 hours out of my daily 8-hour work. It is common here in the school to have multiple roles since this is a small school with a limited number of students."

[redacted], in a separate statement, asserts "assignments of our employees are flexible in terms of their job titles and job duties. . . . [I]t is a common practice for our employees to have multiple responsibilities." The petitioner had never previously stated that its employees worked multiple tasks. Rather, the petitioner submitted an employee list and report cards that contradicted one another. The new statements on appeal, therefore, come across as *ad hoc* explanations tailored to the director's decision.

The petitioner submits an excerpt from a report prepared by the Center for New York City Affairs, indicating that "[t]eachers in small schools . . . may be called upon to teach more than one subject." It remains that the petitioner previously listed multiple duties for many of its employees, but did not take this obvious opportunity to mention any crossover duties between subjects, or between administrative and instructional duties. The new assertion that the petitioner's administrative staff also had teaching duties is not consistent with the previously submitted evidence.

With respect to the additional named workers beyond the six claimed on USCIS and IRS documents, there is likewise no corroborated explanation from the petitioner. Counsel, on appeal, states that, beyond the petitioner's six listed employees, "[t]he employer also engages some contract employees who are not listed on the employer's quarterly reports. The 3 names mentioned in the director's decision are such contract workers."

The IRS Forms 990 indeed refer to payments to "contractual employees" in 2008 and 2009, above and beyond salaries paid in those years. The record, however, contains no other evidence to identify the "contractual employees," to specify their roles within the petitioning entity, or to show that they were under contract to the petitioner in 2010. The petitioner's past hiring of contractors does not, on its face, force the conclusion that any teachers not named on the quarterly wage detail reports must have been contractors. It is plausible that they were contractors, but plausibility does not satisfy the petitioner's burden of proof.

Another discrepancy arose from the beneficiary's prior statements to the government, while seeking immigration benefits. The regulation at 8 C.F.R. § 103.2(b)(16)(i) would apply to these statements. Because the director did not provide the petitioner with advance notice about these statements, the AAO will give full consideration on appeal to information and evidence that the petitioner would otherwise have submitted in response to a notice of derogatory information.

The beneficiary filed Form DS-156, Nonimmigrant Visa Application, at an overseas consulate on July 30, 2007. The application contained the following information:

Name of present employer:	[redacted]
Present occupation:	Editor
Intended arrival date:	12 September 2007 [the day before the first day of Ramadan]
Length of intended stay:	one month
Purpose of trip:	Leading the rituals related to the month of Ramadan such as reciting the Quran, leading the prayers (the Taraweeh Prayer) and giving the Friday ceremonies plus other talks or lessons.

The beneficiary signed the visa application, thereby attesting to the following statement:

> I certify that I have read and understood all the questions set forth in this application and the answers I have furnished on this form are true and correct to the best of my knowledge and belief. I understand that any false or misleading statement may result in the permanent refusal of a visa or denial of entry into the United States.

A letter from [redacted], addressed to the beneficiary and dated July 18, 2007, accompanied the application. In that letter, [redacted] stated:

> [T]he board of the [petitioning] Institute would like to extend to you an invitation to visit our Institute for this coming month of Ramadan.
>
> We would like you to lead the prayers, the Taraweeh Prayer (we read one chapter every night in Ramadan). We also would like you to give the Jumua'ah Khutbah

> while you are with us, plus other talks or lessons during your stay (including teaching Quran for kids and adult) as possible.
>
> . . . This invitation is also for you to work in our center in the future.

With respect to the notification requirements at 8 C.F.R. § 103.2(b)(16)(i), the petitioner's own letter – largely echoing the beneficiary's statements on the visa application – is not information of which the petitioner is unaware.

The Department of State approved the visa application, granting the beneficiary an R-1 nonimmigrant religious worker visa. The director, in the denial notice, noted that the beneficiary's claimed duties during his three years in R-1 nonimmigrant status bear little resemblance to the stated purpose of what the beneficiary claimed would be a one-month visit. The director also stated that the petitioner's list of "Full Time Staff Positions" "indicates that there are no personnel engaged in everyday Imam duties such as leading the rituals, leading the prayers and giving the Friday ceremonies. In fact, the duties provided suggest that all personnel are engaged in school related duties."

On appeal, counsel states:

> The visa application was processed within a few days of the start of the month of Ramadan and the beneficiary knew that he [would] be leading prayers during the month of Ramadan. Therefore, he placed more emphasis on the "leading prayers" part of his job duties in his visa application. However, when the statement is read in conjunction with the letter provided by the employer, it becomes clear that the main job [would be] to teach Quran and not just leading prayers, giving Friday sermons, etc. . . . Leading daily prayers and reciting Quran during Ramadan on behalf of the petitioner come within the broader set of duties as a Quranic teacher. He routinely leads prayers at prayer-time in a designated room within the school.

Counsel claims that the beneficiary "placed more emphasis on the 'leading prayers' part of his job duties" because the beneficiary traveled to the United States just before the month of Ramadan. This claim (not corroborated by any statement from the beneficiary) makes little sense. The beneficiary prepared the visa application six weeks, not "a few days," before Ramadan began. More importantly, if the beneficiary intended to work for the petitioner year-round as a teacher, his duties during one month of the year would not receive "more emphasis" simply because of the timing of his arrival, with only a vague, offhand reference to "lessons" covering the remainder of the year. Review of the visa application shows that the petitioner gave Ramadan duties "more emphasis" because he claimed that he would only visit the United States for "one month," specifically "the month of Ramadan." The beneficiary's stated intention to depart the United States immediately after Ramadan conclusively rules out any inference that, when the beneficiary referred to "other talks or lessons," he was referring to year-round academic duties.

In an affidavit submitted on appeal, the beneficiary states: "I do not have a clear memory of my listing of [the] purpose of my trip to the United States. . . . A possible explanation for my emphasizing Traweeh [*sic*] prayer is that the month of Ramadan was about to start. . . . Nevertheless, I knew that I would be teaching Islamic Studies and Quran to the students." The beneficiary's claimed recollections, several years after the fact, do not have the same weight as the statements that he made on the application itself.

Counsel urges the AAO to compare the visa application with "the letter provided by the employer," but that letter conveyed "an invitation to visit [the petitioner] for this coming month of Ramadan" and teach "other . . . lessons . . . as possible." The new claim, years after the fact, that this offhand phrase referred to year-round teaching duties, unrelated to Ramadan observances, strains credulity. Neither the visa application nor the petitioner's letter indicated that the beneficiary would have primary year-round responsibilities as a Quran and Islamic studies teacher, and both documents specified the duration of the intended visit as being the month of Ramadan. The petitioner's vague reference to additional "future employment" does not overcome this finding.

The petitioner's 2008 employment contract with the beneficiary states that the beneficiary's duties include leading "prayers in the month of Ramadan," but "Teaching Quran & Islamic Studies" is the first listed duty on the contract. (Ramadan duties come second, followed by "curriculum development.") Other lists of the beneficiary's job duties, quoted elsewhere in this decision, do not mention Ramadan at all. The record does not support counsel's claim that the petitioner's statements and the beneficiary's prior claims are easily reconciled. If the beneficiary applied for the visa with the intention of working for the petitioner for several years, then he made a false statement when he claimed he would return after "one month."

The AAO notes that [redacted] indicated, as late as November 2010, that the petitioner's "Mosque is under construction; so we currently have no Imam (ministers) now." Counsel, likewise, acknowledges that the mosque "is under construction." The IRS, in its 2007 determination letter recognizing the petitioner's tax-exempt status, classified the petitioner under section 170(b)(1)(A)(ii), relating to schools, rather than section 170(b)(1)(A)(i), relating to churches. Therefore, the IRS demonstrably does not consider the petitioning entity to be a house of worship.

The petitioner has not resolved the discrepancies between the petitioner's and the beneficiary's claims and the documentary evidence of record. The AAO will therefore affirm the director's finding that, under *Ho*, the various unresolved inconsistencies and discrepancies in the record cast doubt on the petitioner's other statements concerning health care coverage.

The AAO will dismiss the appeal 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. The petitioner has not met that burden.

ORDER: The appeal is dismissed.