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U.S. Department of Homeland Security
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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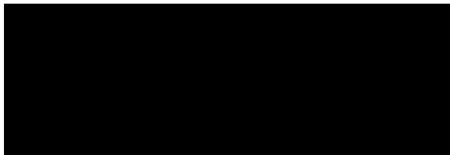
Date: **JUN 20 2012** Office: CALIFORNIA SERVICE CENTER

FILE:

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:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 Muslim 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 how it intends to compensate the beneficiary. The director additionally found 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.

On appeal, the petitioner submits a brief from counsel, a letter from its accountant with an attached annual financial statement for 2009, a printout from the United States Department of State website, an affidavit from the beneficiary, a translated letter from the [REDACTED] in Egypt, and a letter from the [REDACTED] in Detroit, Michigan.

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 issue to be discussed is whether the petitioner has established how it intends to compensate the beneficiary. The United States Citizenship and Immigration Services (USCIS) 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 and in an accompanying letter, the petitioner indicated that it intended to provide the beneficiary with a salary of \$3,000 per month. In an additional letter, the petitioner asserted that it has employed the beneficiary as an imam since January, 2009. As evidence regarding its finances, the petitioner submitted a copy of a checking account statement for the period of July 1, 2009 to July 31, 2009, showing a current balance of \$478,141.50 and a previous balance of \$282,311.86. The petitioner also submitted copies of the beneficiary's paystubs for the months of April, May, and July of 2009, each in the amount of \$3,000 and showing "Year to Date" totals consistent with a monthly salary of \$3,000 for all of 2009.

On March 22, 2010, USCIS issued a Request for Evidence, in part requesting additional evidence regarding the petitioner's ability to compensate the beneficiary. The notice instructed the petitioner to submit copies of the petitioner's Internal Revenue Service (IRS) Forms W-3 Transmittal of Wage and Tax Statements for the last two years. The notice also stated:

Annual Financial Statement: Submit recent audits, tax returns (if the church elected to file) OR an annual financial statement (complete and itemized listing your sources of income and all your expenses), signed and certified by the petitioner AND supported by documentary evidence such as bank statements, certificates, and/or letters from financial institutions.

The notice additionally instructed the petitioner to submit evidence of past compensation including a copy of the beneficiary's 2009 federal income tax returns including Forms W-2 and 1099-MISC, and copies of the beneficiary's pay statements in the year 2009.

In a letter responding to the notice, the petitioner stated that, as a non-profit charity organization, it is not required to file tax returns with the IRS. The petitioner submitted a copy of its 2009 Form W-3 Transmittal of Wage and Tax Statements, which indicated that it paid a total of \$217,486.00 in wages for that year. The petitioner also submitted a copy of the beneficiary's Form 1040 tax return for 2009 as well as his Form W-2 indicating that he was paid \$36,000.00 by the petitioner. Although the petitioner did not submit any additional paystubs for 2009 as

requested, it submitted paystubs for January, February, and March of 2010 showing monthly payments of \$2,500 to the beneficiary.

On May 19, 2010, the director denied the petition, in part finding that the petitioner had failed to establish how it intends to compensate the beneficiary. The director stated, in pertinent part:

The petitioner did not submit recent audits, tax returns, or an annual financial statement supported by documentary evidence. According to the petitioner (letter to USCIS dated April 20, 2010), they are a non-profit charity organization and are not required by the IRS to report their income. USCIS agrees with the petitioner. However, the RFE clearly stated that a recent audit or an annual financial statement supported by documentary evidence is required if they did not file tax returns. It was not explained by the petitioner why they are unable to submit a recent audit or an annual financial statement. Lacking the requested evidence, the petitioner failed to meet 8 C.F.R. 204.5(m)(10).

On appeal, the petitioner submits a letter from its accountant, [REDACTED] with an attached annual financial statement for 2009 indicating "Total Current Assets of \$1,013,491.78. Further, counsel argues that the documents already submitted by the petitioner accompanying the petition and in response to the Request for Evidence provide verifiable evidence of its ability to compensate the beneficiary. Counsel states:

The Notice of Denial stated that the petitioner failed to submit recent audits, tax returns, or an annual statement supported by documentary evidence. The statute, regulation or CIS instructions do not mandate such documents as the only documents to meet the requirement of demonstrating ability to compensate a religious worker. As demonstrated above, the regulations and CIS instruction do allow the submission of evidence that the beneficiary is already being compensated.

The regulation at 8 C.F.R. § 204.5(m)(10) states that initial evidence regarding the petitioner's ability to compensate the beneficiary "may include past evidence of compensation for similar positions." The regulation also states that any available IRS documentation "such as IRS Form W-2 or certified tax returns" must be provided, or else "an explanation for its absence must be provided, along with comparable, verifiable documentation." The petitioner submitted IRS documentation in the form of a Form W-2 showing past compensation of \$36,000 to the beneficiary in 2009, as well as a Form W-3 showing total wages of \$217,486.00 paid by the petitioner during 2009. The petitioner additionally submitted a copy of a bank statement and, on appeal, an annual financial statement, both of which indicate that the petitioner has sufficient funds to compensate the beneficiary.

The AAO finds that the petitioner has established its ability to compensate the beneficiary and will therefore withdraw the director's findings with regard to that issue.

The second issue to be discussed is whether the petitioner has established that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience during the two years immediately preceding the filing of the petition.

The USCIS regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary 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 August 31, 2009. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work in lawful immigration 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.

In a letter submitted with the Form I-360 petition, the petitioner stated that the beneficiary is currently employed as an imam for the petitioning [REDACTED] with a salary of \$3,000 per month and was previously employed as an imam with [REDACTED]. In a separate letter, the petitioner stated that it has employed the beneficiary since January 2009. As

discussed above, the petitioner also submitted copies of three of the beneficiary's paystubs, ending July 2009, showing "Year to Date" totals consistent with a monthly salary of \$3,000 for all of 2009.

The beneficiary filed a Form I-485, Application to Adjust Status concurrently with the Form I-360 petition. On his Form G-325A, Biographic Information, submitted with the application, the beneficiary indicated that he worked as an Imam for [REDACTED] in Egypt from May 1998 to December 2006, then for [REDACTED] in Detroit, Michigan from December 2006 to November 2007, then again for [REDACTED] from November 2007 to January 2009, and for the petitioner from January 2009 until the present. The beneficiary also submitted a copy of a Form I-94, Departure Record showing that he entered the United States on June 3, 2009 in R-1 status which authorized his employment with the petitioner until June 2, 2012.

In the Request for Evidence issued on March 22, 2010, USCIS instructed the petitioner to submit additional evidence that the beneficiary had been continuously performing qualifying religious work throughout the two-year qualifying period. The notice specifically instructed the petitioner that the evidence should include "the employer's name, specific job duties, the number of hours worked each week, all types of remuneration, level of responsibility and who supervised the work." The notice requested evidence of compensation "such as W-2 forms and pay stubs (or foreign equivalent for that country) showing the beneficiary received payment." The notice also requested that the beneficiary submit a record of earnings from the Social Security Administration (SSA), a copy of the beneficiary's federal income tax return including Forms W-2 and 1099-MISC, and copies of the beneficiary's pay statements in the year 2009. Additionally, the notice instructed the petitioner to submit "legible copies of the beneficiary's first I-94 issued to him or her upon arrival in the United States and any subsequent I-94's issued (copy front and back)."

In response, the petitioner submitted a letter, with translation, from the [REDACTED] in Egypt, which stated the following:

The [REDACTED] hereby certifies that [REDACTED] works as an imam for the prayers and a speaker for Friday prayers and gives weekly lessons at the mosque and teaches children to memorize the Glorious Quran, also adults at [REDACTED]. Starting from the month of May year 1998 A.D until December 2006 A.D. then returned to work again starting from November 2007 A.D until January 2009 A.D

The petitioner submitted a copy of the beneficiary's tax return for 2007, along with a Form 1099-MISC which indicated that the beneficiary was paid \$8,302 by the [REDACTED] during that year. The petitioner also submitted a copy of the beneficiary's tax return for 2009, along with a Form W-2 from the petitioner for \$36,000 and a Form 1099 from [REDACTED] for \$6,531. The petitioner also submitted additional copies of the June 3, 2009 Form I-94 and pages of the beneficiary's passport. A copy of the R-1 visa page from the beneficiary's passport showed an entry stamp dated January 7, 2009.

In the decision, the director noted that the two-year qualifying period immediately preceding the filing of the petition began on August 31, 2007. The director found that the petitioner had not established the continuity of the beneficiary's employment during September and October of 2007, as the experience letter regarding the beneficiary's employment in Egypt did not cover that period. The director further found that the experience letter did not provide sufficient information to establish that his employment in Egypt was qualifying work. The director therefore determined that the petitioner had failed to establish that the beneficiary had the requisite two years of continuous, qualifying work experience.

On appeal, regarding the gap in the beneficiary's employment with [REDACTED] in Egypt during part of the qualifying period, counsel states:

It is true that [REDACTED] was not physically working at [REDACTED] because he was sent to the U.S. with his employer's consent to perform similar job duties at Islamic institutions in the United States. An organization in the U.S. has verified that the beneficiary was performing job duties as an Imam during the relevant time period. Therefore, the beneficiary was continuously performing his ministerial duties for the two years prior to filing the petition. ...

If for any reason, the CIS considers the beneficiary's break in his employment at the [REDACTED] as an interruption to the continuous employment requirement, it should be excused because the beneficiary was performing similar job duties for a different organization during the period in question.

The petitioner resubmits a copy of the experience letter from the [REDACTED] and submits a letter from the [REDACTED] which states that the beneficiary "worked as an Imam and Quran Teacher at the Institute from August 2007 to November 2007" for about 40 hours per week at a rate of \$15 per hour. Additionally, the petitioner submitted an affidavit from the beneficiary, which states in pertinent part:

4. I was employed as an Imam by the [REDACTED] in Egypt from 1998 to January 2009.
5. During my employment with [REDACTED] I was granted leave to come to the U.S. to assist the newly established Islamic institutions in filling temporary positions of Imam and Quranic teachers.
6. I was in the United States during the months of September and October of 2007 and worked at [REDACTED] an Islamic Institution providing prayer and Islamic educational facilities to the Muslims in the Detroit, Michigan area.
7. My job duties at the [REDACTED] were identical to the ones offered to me by the American Moslem Society. In other words, my job duties

included leading daily prayers; giving Friday sermons; reciting Quran during Ramadan; teaching Quran to adults and children, etc.

8. I worked for at least 35 hours per week during my employment with [REDACTED]

9. I requested [REDACTED] mosque to issue a detailed experience letter to verify my employment but was informed by the management that they could only issue standardized experience letters or affidavits to verify my employment.

10. Under the Egyptian law, I was not required to file my tax returns and I never did submit any tax returns.

The AAO notes that the beneficiary states in his affidavit that he did not file tax returns in Egypt as he was not required to do so. However, the regulation at 8 C.F.R. § 204.5(m)(11) requires compensated employment. The petitioner must submit evidence of prior compensation in the form of IRS documentation, or evidence of qualifying self-support. If any of the work during the qualifying period was performed outside of the United States, “the petitioner must submit comparable evidence of the religious work.” The experience letter regarding the beneficiary’s work for [REDACTED] does not indicate whether or not the position was compensated, and the petitioner has not submitted verifiable documentation to establish that such work was compensated as required under 8 C.F.R. § 204.5(m)(11). Therefore, the petitioner has not established that the beneficiary’s employment with [REDACTED] was qualifying religious work.

Further, the regulation at 8 C.F.R. § 204.5(m)(4) requires that, if the beneficiary was in the United States during the qualifying period, he must have been in lawful immigration status, and the regulation at 8 C.F.R. § 204.5(m)(11) requires that any work performed in the United States during that period must have been authorized under immigration law. The petitioner has submitted evidence that the beneficiary was employed by [REDACTED] in the United States during the qualifying period from August to November of 2007. However, the record does not indicate that the beneficiary held any lawful status which would have authorized his employment with [REDACTED] during the two-year period immediately preceding the filing of the petition. Therefore, the beneficiary’s employment with [REDACTED] is not considered qualifying work.

Additionally, to the extent that counsel and the beneficiary assert that the beneficiary was continuously employed by [REDACTED] and working on its behalf while working at [REDACTED] such assertion contradicts employment dates listed in the letter from the [REDACTED]. 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).

For the reasons discussed above, the AAO agrees with the director's determination that the petitioner failed to establish that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition. Therefore, 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.