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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

U.S. Citizenship and Immigration Services

[redacted]

B13

DATE: AUG 0 6 2012 OFFICE: CALIFORNIA SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(i)

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 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 nonimmigrant visa petition. The petitioner appealed the decision, and the Administrative Appeals Office (AAO) withdrew the director's decision and remanded the matter for a new decision. The director again denied the petition and certified it to the AAO for review. The AAO will affirm the denial of the petition.

The petitioner is a [redacted] Islamic school. It seeks to classify the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act, to perform services as a Quranic and religious education teacher/instructor. The director determined that the petitioner had failed to submit required evidence and information, and that discrepancies and contradictions compromised the credibility of the petitioner's claims.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.4(a)(2) indicates that the petitioner may submit a brief within 30 days after the director serves notice of a certified decision. The director issued the certified denial on March 13, 2012. The permitted time period has elapsed, and the AAO has received no response to the certified denial. The AAO therefore considers the record to be complete as it now stands.

Section 101(a)(15)(R) of the Act pertains to an alien who:

> (i) for the 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; and
>
> (ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii).

Section 101(a)(27)(C)(ii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii), pertains to a nonimmigrant who seeks to enter the United States:

> (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
>
> (II) . . . 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) . . . 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.

USCIS regulations at 8 C.F.R. § 214.2(r)(1) state that, to be approved for temporary admission to the United States, or extension and maintenance of status, for the purpose of conducting the activities of a religious worker for a period not to exceed five years, an alien must:

(i) Be a member of a religious denomination having a bona fide non-profit religious organization in the United States for at least two years immediately preceding the time of application for admission;

(ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week);

(iii) Be coming solely as a minister or to perform a religious vocation or occupation as defined in paragraph (r)(3) of this section (in either a professional or nonprofessional capacity);

(iv) Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and

(v) Not work in the United States in any other capacity, except as provided in paragraph (r)(2) of this section.

The petitioner filed the petition on May 3, 2007. The director initially denied the petition on November 23, 2009, based on the finding that the petitioner had not established that the beneficiary's intended duties qualify as a religious profession. Following the petitioner's appeal, the AAO withdrew that finding. Rather than repeat the details of that finding, the AAO hereby incorporates its August 11, 2011 remand order by reference. While the AAO did not affirm the director's original denial, the AAO also found other issues that precluded approval of the petition. The director has addressed these issues in the certified decision.

I. HOUSING

The first issue concerns the beneficiary's housing arrangements. The USCIS regulation at 8 C.F.R. § 214.2(r)(11) reads, in part:

Evidence relating to compensation. Initial evidence must state how the petitioner intends to compensate the alien, including specific monetary or in-kind compensation, or whether the alien intends to be self-supporting. In either case, the petitioner must submit verifiable evidence explaining how the petitioner will compensate the alien or how the alien will be self-supporting. Compensation may include:

(i) *Salaried or non-salaried compensation.* Evidence of compensation 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. IRS [Internal Revenue Service] documentation, such as IRS Form W-2 or certified tax returns, must be submitted, if available. If IRS documentation is unavailable, the petitioner must submit an explanation for the absence of IRS documentation, along with comparable, verifiable documentation.

In an introductory statement dated April 23, 2007, counsel stated: "The beneficiary is receiving and will receive a base salary of $2000.00 per month and a rent free accommodation . . . from the society valued at $500.00 per month with paid utilities." The petitioner has submitted a number of letters from [redacted] president and imam of the petitioning entity, containing this same claim.

In its remand order, the AAO stated:

> The petitioner has consistently stated that the beneficiary's compensation includes housing worth $500 per month. The petitioner has not established that the beneficiary has resided, and will continue to reside, in housing owned or controlled by the petitioner.
>
> The petitioner claims that, before the beneficiary worked for the petitioner, he worked for the [redacted] in [redacted] IRS Forms W-2 from [redacted] for 2004 and 2005 show the beneficiary's home address as [redacted] president of [redacted] stated that the beneficiary "was paid $1,800 plus residential accommodation for his services." The beneficiary's 2005 income tax return, prepared no earlier than early 2006, shows that same address. The beneficiary changed employers on May 1, 2005, but evidently did not change residences at that time (more recent documents show a different address, still on [redacted]. Thus, two different employers each claim to have provided housing for the beneficiary at the same address [redacted]. It is significant that the employers did not claim to have paid the beneficiary a housing allowance. Rather, they claimed to have provided the accommodations themselves. The petitioner has repeated this claim on several occasions, never varying or qualifying that claim.

The record shows that not only did the beneficiary claim the same street address under both employers, but he also claimed the same apartment number [redacted] The beneficiary did not report the value of his housing on the income tax returns reproduced in the record, which would tend to suggest that the beneficiary paid for his own housing. A housing benefit over and above the beneficiary's base salary would generally constitute additional taxable income, unless the beneficiary worked as a minister (and the employer specifically designated the housing allowance as such), or the employer provided lodging for the convenience of the employer, and residence in the provided lodging is a mandatory condition for employment. *See* IRS Publication 517, *Social Security and Other Information for Members of the Clergy and Religious Workers*, and IRS Publication 525, *Taxable and Nontaxable Income* (excerpts added to the record August 1, 2012).

In a request for evidence (RFE) dated November 2, 2011, the director instructed the petitioner to submit evidence to show that it owns or leases the beneficiary's housing accommodations, and pays the utilities for those accommodations as claimed. The director advised that documentary evidence would be necessary; "[m]ere statements made by the petitioner will not be sufficient."

In response, [redacted] repeated the assertion that "[t]he beneficiary will receive . . . a rent free residence for the period of employment from the society valued at $500.00 per month with paid utilities." Elsewhere in the same statement, he stated: "We do provide our employees residential

quarters. We pay for rent and employees pay for utilities." The statement, therefore, contains contradictory claims about who pays for utilities.

The petitioner's response also includes a copy of an October 20, 2006 job offer, also signed by [redacted] promising "a base salary of $2000.00 per month and a rent free accommodation valued at $500.00 or in lieu thereof additional $500.00 per month."

The petitioner submitted "pictures of apartments provided as living quarters," said to be "located in apartment complex next to petitioner." A brochure in the record identified the apartment complex as [redacted] The photographs showed exterior apartment doors, respectively marked [redacted] (the number on a fourth door, directly above [redacted] is partially obscured by a railing). A street number visible in the same photograph as door [redacted]

The petitioner submitted a copy of an "Apartment Lease Contract" dated April 2, 2011, indicating that the petitioner leased apartment [redacted] the beneficiary's behalf. The petitioner also submitted a copy of a January 17, 2012 electric bill for [redacted] The street address on the bill does not match the street address on the lease. The bill is in the beneficiary's name, with no evidence that the petitioner paid the bill. Because the utility addressed the bill directly to the beneficiary, there is no evidence of any standing agreement for the utility to bill the petitioner directly.

The 2011 lease and 2012 utility bill do not establish the nature of the beneficiary's housing arrangements at the time the petitioner filed the petition in 2007. Also, the petitioner submitted copies of bank statements dated October through December 2011, when the aforementioned lease was in effect. The lease required monthly payments of $430 each ($410 for rent and $20 for water), but the bank statements do not show any payments in that amount.

Photocopied paychecks (which the petitioner had submitted previously, and which show no marks of processing for payment) indicate that the petitioner paid the beneficiary $2,000 per month in 2005 through mid-2007. This amount is consistent with the monthly salary stated in the October 2006 job offer, without taking housing into consideration. Subsequent payments fluctuated between $1,200 and $2,200, none of them high enough to account for salary plus the promised $500 in lieu of housing.

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.

For the reasons explained above, the petitioner's latest submission fails to show that the petitioner has provided the beneficiary's housing in the past or at present. Furthermore, the AAO's remand notice had previously advised the petitioner of the conflict that arose when the beneficiary supposedly lived in housing provided by two different employers, but did not move when he changed jobs. The petitioner's latest submission does not address this conflict.

In the certified denial notice dated March 13, 2012, the director noted that the petitioner had not resolved the above issues relating to the beneficiary's housing expenses. The AAO will affirm the director's uncontested finding.

Also relating to the issue of compensation, the AAO noted that the petitioner had "submitted two compiled financial statements, both dated February 8, 2007," and both prepared by "[t]he same accounting firm [redacted]." One statement indicated that the petitioner ended 2005 with $679,393 in net assets. The other statement indicated that the petitioner began 2006 with $843,820 in net assets. The AAO found: "there is no explanation for the $164,427 discrepancy between the petitioner's claimed net assets at the end of 2005 and at the beginning of 2006."

The AAO also observed that the petitioner had filed a Form I-360 special immigrant petition on the beneficiary's behalf on November 9, 2006, which included

> copies of bank statements and paychecks, along with copies of IRS Forms W-2. The Forms W-2 indicated that the petitioner paid the beneficiary $24,000 per year in 2006, 2007 and 2008. The checks dated 2007, however, add up to $24,400, and the checks from 2008 total $25,200. This disagreement between the petitioner's IRS documents and bank documents represents a further discrepancy that diminishes the petitioner's overall credibility under *Matter of Ho*.

In the 2011 RFE, the director noted the "$164,427 discrepancy between the petitioner's claimed net assets at the end of 2005 and the beginning of 2006," and instructed the petitioner to "provide an explanation for the discrepancy, including documentary evidence that shows accurate budgets for monies set aside for salaries, leases, construction, utilities, contract employees, and/or health care coverage for current employees."

The petitioner's response included fragmentary evidence such as recent bank statements, but nothing to address the serious discrepancy between the 2005 and 2006 financial statements, prepared the same day by the same accounting firm. The director, in the certified denial notice, stated: "Although given an opportunity to clarify this discrepancy, the petitioner failed to provide an explanation." The AAO will affirm this uncontested finding.

II. EMPLOYER ATTESTATION

The director, in the certified denial notice, raised several issues concerning the required employer attestation. The USCIS regulation at 8 C.F.R. § 214.2(r)(8)(iv) requires the petitioner to provide the 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.

In keeping with the above regulation, the director, in the 2011 RFE, instructed the petitioner to submit "a list of the current number of paid and unpaid individuals within the petitioner's . . . religious organization including full name(s), position title(s) and description(s) of their duties." The director also requested "a copy of the organizational chart for the petitioner's organization, including all

information about administrative employees, teachers, and volunteers," as well as copies of IRS documentation to establish the employees' compensation.

In a January 2012 response, the petitioner submitted an attestation identifying 13 workers, including the beneficiary. The petitioner also submitted a separate "list of paid employees," missing the beneficiary's name but showing the other 12 names listed on the attestation. The 12 names are the same on both lists, but the duties do not always match. The attestation indicates, for instance, that [redacted] work in "food service," whereas the "list of paid employees" lists their function as "cleaning."

The petitioner also submitted copies of 21 IRS Form W-2 Wage and Tax Statements for 2011, corresponding to the 12 employees on the "list of paid employees" and nine others not named on either the list or the attestation. The salaries on the 21 Forms W-2 add up to $256,100, an amount also shown on the petitioner's IRS Form W-3 Transmittal of Wage and Tax Statements for the year.

The director determined that "the petitioner failed to disclose names of employees" on the attestation and the list of paid employees, and that the petitioner had provided "vague" and conflicting information regarding its number of employees and their duties. The record, however, does not support the director's conclusion that the petitioner provided conflicting information about its number of current employees.

The attestation and employee list are consistent with respect to the number and identity of workers other than the beneficiary (who, if he lacked employment authorization in late 2011 and early 2012, would not be on a list of paid employees and would not have received an IRS Form W-2). As for the additional workers who received IRS Forms W-2 for 2011, the petitioner never claimed that they still worked for the petitioner in early 2012 when it compiled the employee lists. Anyone who received a salary from the petitioner at any time in 2011 would receive a Form W-2 for that year, even if they left the petitioner's employ during that year. Therefore, the record does not support the director's finding that the petitioner left several current employees off the 2012 employer attestation. Nevertheless, other disqualifying issues remain, and therefore the AAO's withdrawal of this particular finding does not change the overall outcome of the decision.

The attestation requirements at 8 C.F.R. § 214.2(r)(8)(v) and (vi), respectively, require the petitioner to attest to the number of aliens holding special immigrant or nonimmigrant religious worker status currently employed or employed within the past five years by the prospective employer's organization, and the number of special immigrant religious worker and nonimmigrant religious worker petitions and applications filed by or on behalf of any aliens for employment by the prospective employer in the past five years.

In the 2011 RFE, the director instructed the petitioner to provide information about each of these individuals and their respective immigration proceedings. In response, the petitioner indicated that it had filed four petitions in the past five years, and it employed three nonimmigrant or special immigrant religious workers during that period. The petitioner identified one of its present employees as a "special immigrant," and the beneficiary had previously held R-1 nonimmigrant status while working for the petitioner. The petitioner did not identify the third nonimmigrant or special immigrant employee or provide any information about petitions filed.

The director, in the denial notice, found that the petitioner failed to provide much of the requested information about its filing history and past and present employment of nonimmigrant and special immigrant religious workers. On that basis alone, USCIS cannot properly approve the petition. *See* 8 C.F.R. § 103.2(b)(14). The record shows that the petitioner's RFE response is deficient in the ways described by the director, and therefore the AAO will affirm this finding.

The USCIS regulation at 8 C.F.R. § 214.2(r)(8)(x) requires the petitioner to identify the specific location(s) of the proposed employment. The petitioner's initial filing had included a document, with the heading "A Few Basic Facts," indicating that the petitioner had a "Main center at [redacted] and a '[redacted]

The director, in the 2011 RFE, requested "documentary evidence to prove religious activity" at the two addresses specified above. The director requested documentation such as lease agreements, occupancy permits, insurance documentation, floor plans, and related materials. The director also requested photographs of the facilities, as well as information to establish the number of students at the petitioning school. The petitioner had indicated that the beneficiary would teach 10-15 students.

On the employer attestation included in the petitioner's response, the petitioner indicated that the beneficiary would only work at the [redacted] location. The petitioner submitted no evidence about the [redacted] location, even though the director had requested information about both locations. Photographs of the [redacted] property show the word "MASJED" (mosque) in prominent letters above the door; there was no equally prominent indication that the structure houses a school. Other photographs show large groups of men and boys inside and outside the building, but no identifiable classrooms. The groups shown are significantly larger than the 10 to 15 students claimed for the petitioner's classes.

The director found that the petitioner had submitted only a few of the materials that the director had requested regarding the petitioner's location(s). The petitioner has not disputed this finding, and the AAO will affirm the director's finding for the reasons explained above.

III. PAST STATUS

The remaining issues concern the beneficiary's past work and his nonimmigrant status. The director found that the petitioner had failed to submit evidence regarding the beneficiary's prior employment. The director found gaps in the documentation of the beneficiary's past compensation, and contradictions in his work schedules. The director, in the RFE, had instructed the petitioner to "[s]ubmit an itemized record from the Social Security Administration that shows the beneficiary's earnings and the employers he or she has worked for." The petitioner did not submit the requested record, instead submitting a photocopy of the beneficiary's Social Security card. The failure to submit requested evidence means that USCIS cannot properly approve the petition. *See* 8 C.F.R. § 103.2(b)(14).

The director concluded that the petitioner had not submitted sufficient credible evidence to show that the beneficiary had maintained status by only performing qualifying religious work while in R-1 nonimmigrant status, as required by the USCIS regulations at 8 C.F.R. §§ 214.2(r)(5) and (12) and

214.1(e), which provides that unauthorized employment by a nonimmigrant constitutes a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act.

The director also stated that the beneficiary's R-1 nonimmigrant status expired on May 1, 2003, and the petitioner did not file the Form I-129 petition and extension request until May 3, 2003. Under the USCIS regulation at 8 C.F.R. § 214.1(c)(4), an extension of stay may not be approved for an applicant who failed to maintain the previously accorded status or where such status expired before the application or petition was filed.

There is no appeal from the denial of an application for extension of stay filed on Form I-129. 8 C.F.R. § 214.1(c)(5). Because extension issues lie outside the AAO's appellate jurisdiction, the AAO cannot rule on matters that relate to the beneficiary's maintenance of status or eligibility to extend his stay.

Nevertheless, the petition remains denied for the reasons described above, including the petitioner's inconsistent and unsubstantiated claims regarding the beneficiary's housing arrangements, and omission of information required in the employer attestation.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will affirm the certified denial of the petition.

ORDER: The director's decision of March 13, 2012 is affirmed. The petition remains denied.