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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **APR 06 2005**
EAC 03 064 50602

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: 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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

S Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner 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 Islamic religious instructor. The director determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization. The director further determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition, that the position qualified as that of a religious worker, or that it had extended a qualifying job offer to the beneficiary.

On appeal, counsel submits a brief and additional documentation.

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 October 1, 2008, 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 October 1, 2008, 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 in this case is whether the petitioner established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either

abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States." The regulation indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition."

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on December 17, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as an Islamic religious instructor throughout the two-year period immediately preceding that date.

In its letter of October 16, 2002, the petitioner stated that the beneficiary had worked as an Islamic religious instructor at the madrisa Jamia-tul-Momenin in Rawalpindi, Pakistan from July 1998 until April 30, 2001. The petitioner stated that the beneficiary taught Islamic history full time and was compensated at the rate of Rs. 4,100 per month. The petitioner submitted no evidence with the petition to corroborate the beneficiary's employment at Jamia-tul-Momenin. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner also stated that the beneficiary served as a volunteer with the petitioner from May 2001 until April 3, 2002, at which time she was approved for an R-1 nonimmigrant religious worker visa. The petitioner stated that at that time, it employed the beneficiary as a religious instructor.

The petitioner stated that the beneficiary's full-time duties included teaching the Koranic Arabic language, teaching the doctrines of the Koran and Islamic faiths, teaching the role of women in Islamic culture, teaching the role of Muslim parents in raising children in the United States, teaching Islamic history, teaching Islam jurisprudence and law, conducting special workshops in Islamic law, supervising camps and seminars, counseling Muslim women, and conducting the Islamic bathing ritual for deceased Muslim women. The petitioner stated that it provided the beneficiary with a stipend of \$300.00 per week. The petitioner submitted no evidence, such as canceled checks, pay vouchers, verified work schedules, or other documentary evidence to corroborate the beneficiary's work with the petitioning organization. *Id.*

In a request for evidence (RFE) dated May 8, 2003, the director instructed the petitioner to submit evidence of the beneficiary's prior experience, including the duties and salaries of the position and evidence that the beneficiary actually performed the duties.

In response, the petitioner submitted a letter from M.A. Haleemi, principal of the madrisa Jamia-tul-Momenin, who stated that the beneficiary worked full time at the school from July 1998 to April 30, 2001, and that:

She delivered lectures on Islamic History of the Prophet Mohammad (PBUH), laws of Islam, the doctrines of the Quran and Islamic faith. She was also teaching the role of women in Islamic culture, emphasizing the role of the women in the family and the society. For this subject she also conducted religious counseling services to women and young girls. She was a good teacher of Quranic Arabic language . . . She got [a] salary [of] Rs.4,100/ per month.

The petitioner also submitted a letter from Agha Syed Naseem Abbas Rizvi, chairman of the All Pakistan Zakireen & Waizeen Council, an organization of Shiite Muslim clerics. According to Mr. Rizvi, the beneficiary worked under his supervision as an Islamic religious instructor in Rawalpindi, Pakistan from July 1998 to April 30, 2001. The petitioner again provided no corroborative evidence of the beneficiary's employment, such as pay vouchers or other documentary evidence. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190.

In response to the RFE, the petitioner also submitted a copy of a year 2002 Form 1099-MISC reflecting that it paid the beneficiary \$10,500 in nonemployee compensation. The petitioner, however, submitted no evidence of the beneficiary's work with the petitioning organization in the year 2001. *Id.*

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is

not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

In the rare case where volunteer work might constitute prior qualifying experience, the petitioner must establish that the beneficiary, while continuously and primarily engaged in the traditional religious occupation, was self-sufficient or that his or her financial well being was clearly maintained by means other than secular employment.

On appeal, the petitioner submitted additional statements from Mr. Rizvi and Mr. Haleemi, who reiterated that the beneficiary had worked at the madrisa Jamia-tul-Momenin from July 1998 to April 30, 2001. However, the petitioner again failed to provide documentary evidence to corroborate these statements. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190. Further, the petitioner provided no evidence of the beneficiary's employment with the petitioning organization in 2001, and provided no evidence that she was not dependent upon secular employment for her financial support during this period.

The evidence is insufficient to establish that the beneficiary was continuously employed as a religious instructor for two full years prior to the filing of the visa petition.

The director also determined that the petitioner had not established that the position qualified as that of a religious worker.

Pursuant to 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work in a religious occupation. To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Citizenship and Immigration Services (CIS) therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The proffered position is that of an Islamic religious instructor. According to the petitioner, the duties of the proffered position includes teaching the Koranic Arabic language, teaching the doctrines of the Koran and Islamic faiths, teaching the role of women in Islamic culture, teaching the role of Muslim parents in raising children in the

United States, teaching Islamic history, teaching Islamic jurisprudence and law, conducting special workshops in Islamic law, supervising camps and seminars, counseling Muslim women, and conducting the Islamic bathing ritual for deceased Muslim women. The evidence is sufficient to establish that the proffered position is a religious occupation within the meaning of these proceedings.

The director further determined that the petitioner had not established that it had extended a qualifying job offer to the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

The petitioner stated that it will pay the beneficiary \$300.00 per week and that she will be expected to work at least 34 hours per week, “not including grading of exams and homework, [and] conducting seminars and religious counseling.”

The evidence sufficiently establishes that the petitioner has extended a qualifying job offer to the beneficiary.

The remaining issue in this case is whether the petitioner has established that it is a bona fide nonprofit religious organization.

The regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

(3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code (IRC) as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, if

applicable, and a copy of the organizing instrument of the organization that contains a proper dissolution clause and which specifies the purposes of the organization.

The petitioner submitted a copy of a June 10, 1986 letter from the IRS granting it tax-exempt status under section 501(c)(3) of the IRC. According to documentation from the IRS, the petitioner's tax-exempt status derives from classification not under section 170(b)(1)(A)(i) of the IRC, which pertains to churches, but rather under section 170(b)(1)(A)(vi) of the IRC, which pertains to publicly-supported organizations as described in section 170(c)(2) of the IRC, "organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes," or for other specified purposes. This section refers in part to religious organization, but to many types of secular organizations as well.

An organization that qualifies for tax exemption as a publicly-supported organization under section 170(b)(1)(A)(vi) of the IRC can be either religious or non-religious. The burden of proof is on the petitioner to establish that its classification under section 170(b)(1)(A)(vi) derives primarily from its religious character, rather than from its status as a publicly-supported charitable and/or educational institution.

Because the IRS determination letter that classifies an entity under section 170(b)(1)(A)(vi) of the IRC cannot, by itself, establish that the entity is a religious organization, that determination letter cannot satisfy 8 C.F.R. § 204.5(m)(3)(i)(A). The other option, at that point, is to comply with 8 C.F.R. § 204.5(m)(3)(i)(B) by submitting the documentation that the IRS would require to determine that the entity is a religious organization.

The organization can establish this by submitting documentation that establishes the religious nature and purpose of the organization, such as brochures or other literature describing the religious purpose and nature of the activities of the organization. The necessary documentation is described in a memorandum from William R. Yates, Associate Director of Operation for CIS, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003):

- (1) A properly completed IRS Form 1023,
- (2) A properly completed Schedule A supplement, if applicable,
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization, and
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The above list is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B), cited above. The memorandum specifically states that the above materials are, collectively, the "minimum" documentation that can establish "the religious nature and purpose of the organization." Thus, for example, a petitioner cannot meet this burden by submitting only its articles of incorporation. Also, obviously, it is not enough merely for the petitioner to *submit* the documents listed above. The *content* of those documents must establish the religious purpose of the organization.

On appeal, counsel asserts that the petitioner's "entire purpose . . . is too [sic] conduct religious services (i.e. run a mosque) and to provide religious education for Shia Muslims. It is exactly the equivalent of a Church or Synagogue Services." However, counsel submitted no evidence to support his assertions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The

assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The director, prior to denying the petition, made no effort to ascertain whether the petitioner's federal tax exemption derives from its religious character. The director denied the petition, in part, because the IRS classified the petitioner under section 170(b)(1)(A)(vi) rather than section 170(b)(1)(A)(i) of the IRC. This finding is not permissible, for the reasons stated in Mr. Yates' memorandum. The director did not provide the petitioner with an opportunity to submit the materials outlined in that memorandum, and thereby demonstrate that its tax-exempt status derives primarily from its religious character. This deficiency is not fatal to the director's decision, however, because (as discussed above) we have affirmed one of the other stated grounds for denial, which clearer evidence of qualifying tax-exempt status would not overcome.

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 appeal will be dismissed.

ORDER: The appeal is dismissed.