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FILE: [REDACTED]  
EAC 03 007 51113

Office: VERMONT SERVICE CENTER

Date: APR 28 2005

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

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:

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.

*Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The director subsequently reopened the matter on the petitioner's motion, and again denied the petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is an Islamic center which operates the Al-Noor 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 teacher. The director determined that the petitioner had not established (1) that the beneficiary had the requisite two years of continuous work experience as a teacher immediately preceding the filing date of the petition, or (2) that the position offered qualifies as a religious occupation.

On appeal, counsel offers some arguments, and asserts that a brief will be forthcoming within 30 days. To date, nearly a year later, the record contains no further submission and we shall consider the record to be complete.

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 concerns the beneficiary's past employment. The regulation at 8 C.F.R. § 204.5(m)(1) 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." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on October 7, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a teacher throughout the two years immediately prior to that date.

A letter from the [REDACTED] / Brooklyn Islamic Center indicates that the beneficiary "worked for Al-Marwa Center from March 15, 2001 to the present as a teacher of Quran and Arabic language. He worked

Monday to Friday from 8:00 AM to 4:00 PM.” The letter is undated, and therefore it is not clear how much time elapsed between “the present” in the letter and the filing date. The petitioner’s job offer letter to the beneficiary is dated September 16, 2002. The petitioner’s initial submission said nothing at all about the beneficiary’s work experience prior to March 15, 2001.

The director instructed the petitioner to submit further information to show that “the beneficiary has the continuous two years full-time experience in the . . . religious work for the period immediately prior to filing this petition.” In response, the petitioner has submitted a new letter from the Al-Marwa Center, indicating that the beneficiary “worked for [redacted] Center from March 15, 2001 until September 12, 2002.” Nidal Abuasi, principal of Al-Noor School, states that the beneficiary “is employed at Al-Noor School,” but does not specify when this employment began. Like the first submission, this supplementary submission contains nothing about the beneficiary’s employment prior to March 15, 2001.

The petitioner submits a list of its employees. The beneficiary’s name does not appear on this list. A separate list indicates that the beneficiary is one of six aliens for whom the petitioner has filed petitions.

The petitioner has submitted copies of the beneficiary’s 2001 and 2002 tax returns. Both returns show income from wages as well as from business. The source of the wages is not identified. The business income is said to derive from the beneficiary’s work as a “Teacher.” The address of the beneficiary’s “business” is stated as his home address; there is no mention of the address of the Al-Noor School. Under “Business Name,” the beneficiary indicated “Same,” meaning his own name.

The director denied the petition, stating that the petitioner had failed to account for the beneficiary’s employment throughout the entire two years of the qualifying period. On motion from this decision, the petitioner submits a certificate dated May 9, 2000, indicating that the beneficiary had worked at Almasaay Shebeen Elkom in Egypt as a “Teacher of Arabic and Islamic subjects” beginning December 9, 1992.

The director denied the petition, noting that the beneficiary entered the United States in December 2000, but did not begin working until March 2001. The director also noted that the beneficiary did not originally enter the United States as an R-1 nonimmigrant religious worker, and therefore there is no reason to believe that a position was waiting for the beneficiary immediately upon his arrival, or that the beneficiary intended to perform such work during his supposedly temporary visit to the United States.

On appeal, counsel states that the director “erred in not considering the experience of [the beneficiary] in Egypt as a Religious Worker for 10 years.” Counsel apparently refers to the certificate from Almasaay Shebeen Elkom, although this document verified seven, not ten, years of employment outside the United States. This certificate is dated May 2000, several months before the qualifying period began in October 2000. Therefore, the certificate is not evidence of employment during the qualifying period; we are not obliged to infer that employment continued after the date on the certificate.

Counsel has argued that the documentation reflects the beneficiary’s “overall continuing experience as a religious worker [since] December 9, 1992,” but it does not show two years of continuous experience immediately prior to the filing date. Counsel acknowledges that the beneficiary entered the United States on December 8, 2000, but there is no evidence that he worked in the United States prior to March 15, 2001. Thus, there is a gap of over four months during the two-year qualifying period, even if we make the unfounded assumption that the beneficiary worked in Egypt right up until he left that country. When we factor in the absence of employment verification after May 2000, there is no evidence that the beneficiary worked anywhere during the first six months of the 2000-2002 qualifying period. Accordingly, the petitioner

has failed to establish that the beneficiary possesses the necessary continuous experience during the two-year qualifying period.

The other issue raised by the director is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) defines “religious occupation” as an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

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 regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

Citizenship and Immigration Services 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 petitioner has offered different versions of the beneficiary’s job title. In the initial filing, the petitioner referred to the beneficiary as a teacher of Quran and Islamic Studies, but elsewhere the petitioner has referred to the beneficiary as a teacher of Arabic language.

The initial submission offered little information about the beneficiary’s position. The director instructed the petitioner to submit further evidence to establish the nature of the position, and to show that the position is typically a full-time job rather than part-time function performed by volunteers. In response, Nidal Abuasi lists the beneficiary’s responsibilities:

1. Teaches Arabic to classes 1B, 1G, 3B, 7B, and 8B. The students are in graded classes from the basics to grammar and literature.
2. Conducts staff development sessions of Arabic and Islamic Studies teachers.
3. Develops resource materials for the teaching of Arabic, e.g. handouts.
4. Assists in the boarding of the buses at dismissal time.
5. Supervises students in the morning assembly, during lunch break, and at the time of prayer.
6. Assists in the training of students and organizing of the Arabic competition.
7. Accompanies students on trips and competitive sports with other Islamic schools.

The above list does not indicate that the beneficiary participates in any religious instruction. Items 1 and 3 relate to language instruction, but many of the other responsibilities are administrative or caretaker positions. Nidal Abuasi, in the letter discussed above, does not explain the religious significance of any of the above responsibilities.

The director, in denying the petition, found that the petitioner had failed to establish the religious significance of the beneficiary’s listed duties. On motion, the petitioner submits a new letter from [REDACTED] indicating that the beneficiary’s “duties and responsibilities include”:

1. Teaching Quran and Islamic Studies to student[s] from grades K/G to 12.
2. Teaching Arabic Language to students from grades K/G to 12.
3. Performing and leading daily noon and afternoon prayers and ceremonies.

The above description differs significantly from the earlier description provided by the same official, which raises questions of credibility. 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. 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. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

of Al-Marwa Center, where the beneficiary worked from March 2001 to September 2002, states, "the position of religious instructor in the Muslim religion is a full time religious work." The director concluded that the petitioner has not established that the beneficiary's duties relate to traditional religious functions beyond those typically performed by part-time volunteers from the congregation.

On appeal, counsel asserts that the director's conclusion was erroneous. When considering the letter from we note that is not the intending employer, and the petitioner's own prior submissions appeared to indicate that the beneficiary's primary responsibility would involve teaching Arabic as a second language. The tautological assertion that a religious instructor works in a religious occupation does not overcome this basis for denial, because the petitioner's repeated changes to the beneficiary's job description do not lead to the conclusion that the beneficiary is a religious instructor.

The petitioner has offered no further response to the director's decision, and we hereby affirm that decision.

Beyond the grounds cited in the director's second denial notice, there is a third stated ground in the initial denial notice, concerning the petitioner's tax-exempt status. 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 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 section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

It cannot suffice for the petitioner simply to establish that it is tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1986 (the Code), because many non-religious organizations qualify for such status. The petitioner must establish that its tax-exempt status arises from its religious character. According to a March 17, 1995 determination letter from the Internal Revenue Service (IRS), the petitioner's tax-exempt status derives from classification not under section 170(b)(1)(A)(i) of the Code, which pertains to churches, but rather under section 509(a)(2) of the Code. This section contains no specific reference to religious organizations, and therefore this classification does not establish that the petitioner's tax-exempt status derives from its religious character. Therefore, the IRS determination letter is not sufficient to satisfy

8 C.F.R. § 204.5(m)(3)(i)(A). To establish that the petitioner's tax-exempt status results from its religious nature, the petitioner must submit supplementary documentation pursuant to 8 C.F.R. § 204.5(m)(3)(i)(B).

The petitioner submits a copy of its Certificate of Incorporation, which reads, in pertinent part:

The purpose or purposes for which the corporation is formed are as follows:

To offer religious education for nursery age students and also to teach Arabic as a second language to children of Arabic-American descent. . . .

Nothing herein shall authorize the corporation to operate or maintain a nursery school, elementary school or secondary school.

Notwithstanding the last paragraph, the record indicates that the petitioner operates an "elementary and junior high school."

The IRS determination letter in the record does not contain a final determination as to the petitioner's classification. Instead, the letter notifies the petitioner of an "advance ruling," essentially a preliminary ruling that is subject to change. The March 1995 letter informed the petitioner that the advance ruling period ended on December 31, 1996, several years before the filing date of the petition. The petitioner has issued no more recent IRS documentation that would reveal whether or not the IRS changed the petitioner's classification after the end of the advance ruling period.

The director advised the petitioner that the documents included in the initial submission were insufficient to establish that the petitioning entity qualifies as a religious organization. In response, the petitioner has submitted another copy of the March 17, 1995 IRS determination letter. The petitioner has also submitted a copy of its 2001 Form 990 Return of Organization Exempt from Income Tax. Part III of the Form 990 instructs the entity to identify "the organization's primary exempt purpose." The petitioner indicated that its primary purpose is "Community Service." An Annual Financial Report that the petitioner submitted to the New York Charities Bureau describes the beneficiary's "Program Services" as a "Literacy program [that] consists of religious and secular educational program administered by the congregation."

The director determined that the petitioner had failed to establish that its tax-exempt status derives from its religious nature. On motion, the petitioner has submitted another copy of the 1995 IRS determination letter. Counsel observes that the motion includes "a copy of the Tax Exempt Certificate issued by the IRS to the Petitioner." The issue, however, is not whether the petitioner is tax-exempt, but whether it is tax-exempt *as a religious organization*. While the director did not mention this issue in the second denial notice, resubmission of the 1995 IRS letter is not sufficient to overcome the director's earlier findings. We find that the materials submitted by the petitioner demonstrate that the petitioner is a tax-exempt nonprofit organization, but that they do not demonstrate that the petitioner's tax-exempt status derives in significant part from its religious nature rather than from other factors such as educational activities.

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.