



U.S. Citizenship  
and Immigration  
Services

[Redacted]

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identifying data deleted to  
prevent clearly unwarranted  
disclosure of personal privacy

FILE: [Redacted]  
WAC 03 221 52794

Office: CALIFORNIA SERVICE CENTER

Date: SEP 16 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:  
[Redacted]

PUBLIC COPY

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*

7 Robert P. Wiemann, Director  
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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is an Islamic center that operates a mosque and a 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 an imam. The director determined that the petitioner had not established that the beneficiary is qualified to perform the duties of an imam.

On appeal, counsel argues that the director failed to give due consideration to expert witness statements, and that the director also failed to consider whether the beneficiary would qualify as a worker in a religious occupation. Upon consideration, we believe these objections to be well founded.

At the same time, other evidence in the beneficiary's alien file prevents the approval of the petition. A "Certified Copy of Marriage Record," maintained by the judge of the Probate Court of Lucas County, Ohio, indicates that a local minister solemnized a marriage between [REDACTED] (the beneficiary's name) and another individual on April 18, 1985.

On September 5, 1985, the other party named on the marriage certificate gave a sworn statement to a special agent of legacy Immigration and Naturalization Service. That individual stated that she received \$600 in cash in exchange for marrying a [REDACTED] national named [REDACTED]. The individual added: "I understand that this marriage was solely for the purpose of allowing Salan to stay in the United States, go to school and become a citizen." A 1988 diploma from Cuyahoga Community College shows that the beneficiary was a student in Ohio some time after the affiant married a student (seeking to "go to school") by that name in Ohio.

8 C.F.R. § 204.2(a)(2)(ii) states:

*Fraudulent marriage prohibition.* Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

A visa petition may be denied pursuant to section 204(c)(2) of the Act, 8 U.S.C. § 1154(c)(2), where there is evidence in the record to indicate that an alien previously conspired to enter into a fraudulent marriage. *Matter of Kahy*, 19 I&N Dec. 803 (BIA 1988). Testimony by the spouse, admitting knowledge of the fraudulent nature of the marriage, constitutes evidence of an attempt or conspiracy for the purposes of 8 C.F.R. § 204.2(a)(2)(ii). *Id.* at 807, n.3.

The marriage certificate and sworn statement in the beneficiary's file indicate that the beneficiary attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. Given this evidence, federal law prohibits the approval of any immigrant petition (including any special immigrant religious worker petition) on the beneficiary's behalf. The law includes no time limit on this prohibition.

The information regarding this 1985 marriage did not form a basis for the denial of the petition, but it is obviously highly relevant to the question of whether or not an immigrant visa petition can be approved on the beneficiary's behalf.

We note that the petitioner and counsel have already been advised of the above information. To date, the petitioner has filed three special immigrant worker petitions on the beneficiary's behalf, all of which have been either denied, or approved and revoked. On May 25, 2005, the AAO dismissed an appeal arising from one of these earlier petitions. In that decision the AAO advised the petitioner and counsel of the above information. The director's subsequent denial of the present petition did not mention the 1985 marriage, and counsel does not discuss it on appeal.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.