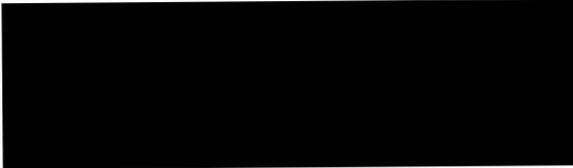




U.S. Citizenship
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Services

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FILE: EAC 05 095 53310 Office: VERMONT SERVICE CENTER Date: JUN 21 2006

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:

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, Chief
Administrative Appeals Office

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

The petitioner is a 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 that the beneficiary had the requisite two years of continuous work experience as an imam immediately preceding the filing date of the petition, or that the petitioner intends to employ the beneficiary in a qualifying religious occupation.

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 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 February 16, 2005. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an imam throughout the two years immediately prior to that date.

██████████ president of the petitioning entity, lists several positions that the beneficiary held overseas, ending with: “Finally, [the beneficiary] was employed as an Imam from December, 1998 until December, 2000, at ██████████ in Pakistan. ██████████ does not state or imply that the beneficiary

has worked anywhere as an imam since 2000. The petitioner submits copies of letters verifying the beneficiary's past employment, but once again none of these letters demonstrates that the beneficiary worked continuously as an imam during the two-year period immediately preceding the filing date.

The director issued a request for evidence, instructing the petitioner to submit, among other things, evidence of salaries paid to the petitioner's employees during the two years prior to the filing date. In response, [REDACTED] states that the beneficiary "is working with this organization as an [REDACTED] on a voluntary basis. The position of [REDACTED] will remain immediately available to him upon his receipt of lawful permanent residence in the United States." [REDACTED] does not specify when the beneficiary purportedly began working at the mosque.

Counsel states "no other salaried positions exist" at the petitioning organization. The petitioner submits a copy of a Form 990 return, indicating that the petitioner paid \$9,000 in "Other salaries and wages" in 2004. The petitioner does not identify the recipient(s) of this \$9,000, despite the director's specific request for copies of tax records to that effect.

The petitioner submits a list of "members . . . living in Harrison and Kearny, NJ." Although the beneficiary is said to reside at the petitioner's premises in Harrison, his name does not appear on the list.

The director denied the petition, stating:

The record includes a copy of the Duties of [the beneficiary] showing a schedule of 40 hours per week. However, the beneficiary is a volunteer with a wife and two children. The record does not show how the alien is supporting himself or his family if he is volunteering his services six days a week.

A review of the Return of Organization Exempt From Income Tax Form 990 for 2004 shows a total of \$9,000 under Other salaries and wages.

The record does not establish that the beneficiary has been and will be employed in a religious occupation.

The director mistakenly allowed the petitioner only 15 days to appeal, rather than 30. We shall give full consideration to the petitioner's appeal here.

On appeal, counsel states:

The USCIS erred in finding that the Petitioner did [not] have the ability to pay the Beneficiary a yearly salary of \$18,000 when it had contributions of over \$54,000.00.

The Service erred in finding that the Beneficiary was not able to support his wife and two children, who are not even in the Untied [sic] States, but are in Pakistan.

The Service erred in finding that the Beneficiary could not support himself, when he has been given free room and board by the Petitioner, the mosque, during this process.

The director's decision does not contain the above findings. The director did not address the petitioner's ability to pay the beneficiary's wage; rather, the director acknowledged the petitioner's stipulation that the beneficiary has not received such a wage. The director did observe that "the record does not show how the alien is supporting himself or his family if he is volunteering his services six days a week," but this is not the same thing as "finding that the Beneficiary could not support himself." Thus, the bulk of the appeal attempts to refute findings that the director did not make. On appeal, the petitioner submits no new evidence to show how the beneficiary supported himself in 2003 or 2004.

The remainder of the initial appeal statement reads: "The Service erred in finding that the Beneficiary did not have two (2) years of experience in the denomination and that he will not be employed in 'a religious occupation.'" The actual finding is that "The record does not establish that the beneficiary has been and will be employed in a religious occupation." It cannot suffice to show that the beneficiary has, at some point, spent at least two years as an imam. Rather, the petitioner must show that the beneficiary served continuously as an imam throughout the two year period that came immediately before the petition's filing date.

The petitioner has subsequently submitted copies of the petitioner's Form 990 return for 2005, indicating that the petitioner spent \$18,000 on "Lectures" but did not pay any salaries or wages that year. The petitioner has also submitted the beneficiary's Form 1040 income tax return, on which the beneficiary listed himself as "Single" and indicated that he earned \$18,000 in business income as a "Teacher." The beneficiary did not list his business address, but claimed the petitioner's address as his home address.

Neither the petitioner's Form 990 nor the beneficiary's Form 1040 is signed, nor are the copies in the record certified by the Internal Revenue Service. If we take the Form 1040 at face value, and thereby assume that the beneficiary earned \$18,000 in 2005, this would indicate that he received the full proffered wage that year. Yet as late as July 18, 2005, [REDACTED] stated "presently [the beneficiary] is working with this organization . . . on a voluntary basis." This indicates that the beneficiary was not receiving a regular salary or wage from the petitioner in mid-2005. Thus, the Form 1040 is not consistent with prior statements from a mosque official. This inconsistency raises larger 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).

The petitioner submits no evidence on appeal to show that the beneficiary received retroactive pay to cover all of 2005; to identify the source of the beneficiary's alleged \$18,000 earnings; or even to confirm that the beneficiary received that sum at all.

The record contains no contemporaneous evidence to show that the beneficiary was working or living at the petitioning organization in 2003 or 2004. The petitioner's own initial account of the beneficiary's experience did not include any claim that the beneficiary had worked at the petitioning mosque. There is no evidence that the petitioner had any full-time paid employees at the time of filing, which casts some doubt on the claim that the beneficiary will become the petitioner's sole full-time paid employee upon approval of the petition.

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.