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U.S. Citizenship  
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FILE: LIN 03-277 51205 Office: NEBRASKA SERVICE CENTER Date: OCT 04 2006

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:

SELF-REPRESENTED

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, Nebraska 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 Shia Islamic organization that, according to [REDACTED] “runs congregations of Shia religion all across North America, Europe and Asia.” 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 minister. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition.

On appeal, the petitioner submits a letter from [REDACTED] and copies of documents, some of which duplicate previous submissions.

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 September 26, 2003. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a minister throughout the two years immediately prior to that date.

The petitioner's initial filing was skeletal, consisting of little more than documentation showing that the beneficiary holds an R-1 nonimmigrant religious worker visa. Therefore, on May 14, 2004, the director instructed the petitioner to provide the initial evidence required by the regulations at 8 C.F.R. §§ 204.5(m)(3) and (4).

In response to the notice, [REDACTED] states that the beneficiary "was a full-time permanent minister/religious instructor at [REDACTED], Karachi, Pakistan, one of our overseas affiliates. Since January 2002 [the beneficiary] has been working full-time for our congregation." It is not clear where the "congregation" is located. The petitioner's mailing address is in New Jersey; the beneficiary's mailing address is in Illinois.

The beneficiary's passport shows that he entered the United States on June 6, 2001. The petitioner submits a copy of the beneficiary's Form I-94 Departure Record stamped June 6, 2001. The beneficiary's continued possession of this Form I-94 indicates that the beneficiary has not left the United States since his 2001 arrival.

[REDACTED] s, Secretary of [REDACTED] states in a letter that the beneficiary "has been in our full-time employment since November 22, 1995." The letter, dated December 18, 2001, contains no mention of the beneficiary's departure from Pakistan six months earlier.

The petitioner submits copies of Form 1099-MISC Miscellaneous Income statements that the petitioner issued to the beneficiary, showing that the petitioner paid the beneficiary \$17,856.84 in 2002 and \$19,556.18 in 2003. The payments appear on line 13, "Excess golden parachute payments."

The director denied the petition, stating:

Service records indicate the beneficiary initially entered the United States pursuant to a B-1 nonimmigrant visa on June 6, 2001. Subsequently, on January 7, 2002, the beneficiary was granted a change of status to that of an R-1 nonimmigrant. The evidence of record does not provide the employment or religious activities of the beneficiary from September 26, 2001 through January 7, 2002. The record, as presently construed, does not reflect the beneficiary has held continuous, paid employment in the religious vocation for the two-year period preceding the filing of the petition before the Service.

Research conducted by the Service regarding golden parachute payments found this to be a form of compensation paid to a shareholder, officer or highly compensated individual of the corporation at the time of a change in ownership of the corporation. Although the evidence establishes the affiliation of the beneficiary to the petitioner organization, it does not establish the beneficiary received compensation as an employee in exchange for performing the duties of a Minister. The petitioner provided no reasoning as to why the beneficiary was not paid as an employee and issued a Form W-2. While the documentation provides the beneficiary may have held a position on the corporate board of the petitioning entity, the Service finds this documentation insufficient in establishing the beneficiary was a Minister or an actual employee of the petitioning organization.

On appeal, the petitioner states:

In the past major part of accounting & payroll work was being done by volunteers. We regret error in preparation of Forms 1099 issued to [the beneficiary]. The error upon audit from a CPA was detected before we received a decision from USCIS. We had corrected the forms and [the beneficiary] was properly notified.

The petitioner submits copies of new Forms 1099-MISC, showing payments to the beneficiary as "Nonemployee compensation" rather than "Excess golden parachute payments." The petitioner's explanation is plausible, given the absence of evidence that the petitioning entity has shareholders or that the beneficiary is an officer of that entity. There is certainly no evidence that the beneficiary is a "highly compensated individual" at the petitioning entity. Also, as the director noted, a golden parachute payment is triggered when a corporation changes hands, resulting in termination of employment of the individual receiving the payment. There is no indication, here, that the petitioner has been purchased or otherwise acquired, or that the beneficiary's employment has ended as a result of such action. Therefore, the petitioner's explanation that the Forms 1099-MISC contain errors appears to be far more plausible than the alternative, *i.e.*, that the beneficiary actually received golden parachute payments in 2002 or 2003.

The remainder of the director's decision, however, is not so easily overcome. The petitioner, on appeal, does not claim that the beneficiary engaged in qualifying work between September 2001 and January 2002. Instead, the petitioner argues that the beneficiary has more than two years of qualifying experience if one considers his employment in Pakistan from 1995 to 2001. This earlier employment, however, cannot establish eligibility. The statutory and regulatory requirement is two years of *continuous* employment, not two years *in the aggregate*. The beneficiary entered the United States in a nonimmigrant classification that did not permit him to work for a United States employer, and there followed several months of disqualifying interruption in his religious work. Therefore, there is no apparent dispute that the beneficiary did not work continuously as a minister throughout the two years that immediately preceded the filing of the petition on September 26, 2003.

The petitioner asserts that the director had granted the beneficiary R-1 nonimmigrant religious worker status in 2002 on the basis of the beneficiary's overseas employment. R-1 status does not require prior employment, although it can speak to the *bona fides* of claimed intent of future employment. In any event, the approval of the beneficiary's R-1 visa in January 2002 does not create a presumption of eligibility in the present proceeding.

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.