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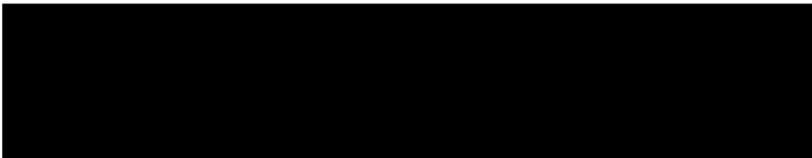


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUL 03 2007  
WAC 04 243 51389

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.

*Naura Deudnick*  
for Robert P. Wiemann, Chief  
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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.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 Arabic language 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 that the position offered to the beneficiary qualifies as a religious occupation.

On appeal, the petitioner asserts that the director underestimated the importance of classical Arabic to the practice of Islam.

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 sole basis for denial concerns the nature of the beneficiary's work. The issue is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The Citizenship and Immigration Services (CIS) 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.

In a letter accompanying the initial filing, [REDACTED] Chairman of the petitioning school, stated:

Our organization's mission is to teach Arabic to Muslims who come from non-Arabic speaking backgrounds and who want to read and understand the Quran. It is an obligation for all Muslims to read and understand the text of the Quran and it is our mission to enable all members to read the Quran in the classical Arabic.

We need [the beneficiary] as our full time Arabic teacher able to teach Arabic and to convey the meaning of Arabic message to the Quran.

Printouts from the petitioner's web site<sup>1</sup> indicate that the petitioner's "mission is teaching **Arabic language and Islamic studies** to read and understand 'THE HOLY QURAN'" (emphasis in original). The materials also state the three "goals of the school," specifically: "To teach the classical Arabic language and Islamic studies for people who would like to understand and read the Quran. To advance understanding of Islamic religion. To teach modern Arabic language as a pre-requisite of classical Arabic language." The petitioner drew a clear distinction between the language of the Quran and the modern version of Arabic: "The Quran was revealed in Classical Arabic so Arabs consider Classical Arabic as an important part of their culture. The main difference between MSA [Modern Standard Arabic] and Classical Arabic lies in the vocabulary. . . . If your goal is to do research, be able to read Arabic books or media, or use Arabic in formal situations, then MSA is what you need to study." This suggests that Classical Arabic is no longer spoken conversationally, but remains in use only for liturgical purposes, in much the same way that Jews study ancient Hebrew or a Christian scholar might study the ancient Greek used in the earliest surviving New Testament manuscripts.

The petitioner's materials state: "By completing the courses, the students will be able to read and understand the Holy Quran and some modern Arabic language." An individual who studied Classical Arabic for religious purposes would have only "some" grasp of Modern Standard Arabic. Other portions of these materials, however, indicate that students who complete the advanced coursework will learn sufficient MSA to "easily be able to work professionally in an Arabic speaking country, and be well on their way to fluency."

The director instructed the petitioner to "explain how the duties of the proffered position relate to a traditional religious function" within her religious denomination (Sunni Islam). In response, [REDACTED] states that the beneficiary is the petitioner's only paid employee, and:

Our mission gives our students the language and interpretive tools to grow in their understanding of the Quran and the teachings of the prophet Mohammad to enable them to rightly practice Islam as their religion. This requires that a Muslim be able to read and understand the Quran in Arabic. Teachers who provide Muslim[s] with ability to read and understand the Quran provide an essential and fully recognized traditional Islamic function. The Quran is written in traditional Arabic. The wording and sentence structure in the [Quran

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<sup>1</sup> The web site was originally <http://www.alsafa.org>. This site now appears to be defunct, but much of the same content (including obsolete references to [alsafa.org](http://www.alsafa.org)) can now be found at <http://geocities.com/hanaakamal>.

are] quite different from the wording and sentence structure in Arabic as it is used in the every day usage in the modern world.

The director denied the petition, based on the finding that teaching the Arabic language is not intrinsically a religious function. The director stated: "To hold that such an activity constitutes a traditional religious function would be to hold that the teaching of **any** language constitutes a religious activity as it would enable the student to better read and understand any religious material written in that particular language" (director's emphasis). Therefore, although the director acknowledged that "knowledge of Arabic may very well be necessary in order to read and understand the Quran," the director concluded that the petitioner had not submitted sufficient evidence to demonstrate that Arabic language instruction is a qualifying religious occupation.

On appeal, [REDACTED] states:

As previously explained, for Muslims, the classical Arabic language is a requirement to understanding God's message as revealed in the Qur'an. Muslims live by the word of the Qur'an and in the instant case, the beneficiary's ultimate goal is to teach *classical* Arabic language, an important part of the Islamic culture, to the students. The sole purpose of this primary duty is for the students to be able to read and understand the Holy Qur'an and Islamic studies.

Lessons in the school revolve around discussions and lectures on being Muslim, in the meaning of Islam, the Do's and Don'ts in Qur'an, Hadith and the reasons for them, the biography of the prophet Muhammed "peace be upon him," and the short stories of the prophets. Without teaching students the Arabic language first, the beneficiary will not be able to continue with their lessons focusing on the teachings of the Qur'an and Muslim religion.

Upon consideration, we find that the director did not give sufficient consideration to the petitioner's claims. In the context provided by the petitioner, instruction in Arabic can amount to a religious occupation if performed on a paid, full-time basis. We therefore withdraw the director's finding and instruct the director to give the matter further consideration. At the same time, we acknowledge that the director would be justified in seeking to confirm that the actual activities undertaken at the petitioning school match the petitioner's claims regarding the nature of those activities.

We also note other factors in the record which, unless resolved, prevent approval of the petition. Any further action by the director should also take these issues into account.

When the AAO began to adjudicate the petitioner's appeal, the AAO took note of information in CIS records as well as from other sources that appeared to cast doubt on whether the petitioner was still in operation. For instance, according to public records available at <http://kepler.ss.ca.gov>, the State of California lists the petitioner's corporate status as "Suspended." According to [http://www.ss.ca.gov/business/corp/corp\\_help.htm](http://www.ss.ca.gov/business/corp/corp_help.htm), a suspended "corporation has lost all rights and powers."

On May 2, 2007, the AAO advised the petitioner of this information, and stated that it would enter a finding of fraud into the record if the petitioner was not able to document its continued existence and operation as an Arabic school. In response, the petitioner has submitted various documents that indicate that the petitioner remains active at the address shown on the Form I-360 petition. These documents, in some cases, raise further questions.

First, we consider the issue of 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.

The petitioner's initial submission included a letter from the Internal Revenue Service (IRS), dated January 23, 2003, indicating that the petitioner is "exempt from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3)." The 2003 IRS letter contained an advance ruling, subject to revision.

In response to the AAO's May 2, 2007 notice, the petitioner has submitted new documentation affirming the petitioner's standing as a 501(c)(3) non-profit organization. A December 6, 2006 letter from the IRS indicates that the petitioner's tax-exempt status derives from classification under section 170(b)(1)(A)(vi) of the Internal Revenue Code, which pertains to publicly-supported organizations as described in section 170(c)(2) of the Code, "organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes," or for other specified purposes. The petitioner also submits a printout from <http://www.taxexemptworld.com>, showing that the petitioner is listed among "Tax Exempt/NonProfit Organizations" in Santa Clara County, California.

Regarding the suspension of the petitioner's corporate status, counsel states: "The petitioner informs me that the suspension of corporate status resulted from the State of California not having processed a change of address form sent to [the] Secretary of State after the move from San Francisco. An Application for Certificate of Revivor to the State of California Franchise Tax Board is being submitted, and the suspension is expected to end upon receipt of the application." The record contains no documentary evidence to support counsel's claims about the grounds for the suspension, or regarding the measures the petitioner has taken to remedy them. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 2, 4 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

On May 22, 2007, an AAO officer called the IRS at [REDACTED] and inquired as to whether suspension of corporate status would affect a corporation's tax-exempt status. The IRS representative indicated that a suspended corporation "would lose the exemption." The AAO's telephone inquiry was general in nature, but judging from the information obtained, additional clarification is obviously required before we can conclude with any confidence that the petitioning entity has legitimately retained its tax-exempt status.

The petitioner's most recent submission does not show that the IRS is aware of the suspension of the petitioner's corporate status. If (as may be the case) suspension affects tax-exempt status, then it is possible that the IRS continues to recognize the petitioner as tax-exempt only because the IRS does not know about the suspension. If that is the case, then the petitioner's continued claims of tax exemption are in bad faith. None of this can be ascertained, however, without further evidence. The petitioner must, therefore, produce verifiable written proof directly from an authorized IRS representative (not from a third party such as a tax lawyer or a state tax authority), acknowledging that the IRS is aware of the petitioner's suspended status, and affirming that the IRS continues to recognize the petitioner as tax-exempt in spite of that suspension. A new IRS letter that reiterates the petitioner's tax-exempt status, but does not address the petitioner's suspension, cannot suffice. The burden of proof is on the petitioner to show that the suspension did not affect its exemption; there is no *a priori* presumption of eligibility at any stage in this proceeding.

We note counsel's claim that the suspension arose from a simple technicality. In this regard, verifiable documentation from the California Secretary of State, containing more details regarding the suspension, perhaps might shed additional light on the situation. Again, the only acceptable evidence in this regard would be directly from an authorized state official. The petitioner's own unsubstantiated claims cannot suffice, nor can the assertions of a third party. 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, 592 (BIA 1988).

Pursuant to the above, prior to rendering a new decision, the director must allow the petitioner an opportunity to obtain verifiable documentation from the IRS to show that the IRS is aware of the petitioner's corporate suspension but nevertheless continues to regard the petitioner as a qualifying tax-exempt non-profit organization.

Another issue that arises from review of the petitioner's documentation concerns the petitioner's compensation of the beneficiary. The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner has stated that the beneficiary is to receive a monthly salary of \$1,000, plus free housing and utilities valued at \$1,000 per month. The record contains IRS Form W-2 Wage and Tax Statements that the petitioner issued to the beneficiary for 2003, 2004 and 2006. If the petitioner had paid the beneficiary \$1,000 per month, these forms would show that the beneficiary received \$12,000 per year. In reality, the forms show that the petitioner paid the beneficiary \$8,000 in 2003, \$7,000 in 2004, and \$6,200 in 2006. Thus, the petitioner has consistently paid the beneficiary well under the proffered rate, and the amount paid has declined over time. The petitioner's persistent underpayment of the beneficiary's salary does not, on its face, suggest that the petitioner has ever been able to pay the beneficiary the full amount.

One of the forms of financial documentation acceptable as evidence of ability to pay is "federal tax returns." Nonprofit organizations do not file tax returns as such, but many file the functional equivalent, called an IRS Form 990 return. The petitioner has not provided copies of any Form 990 returns. We here revisit the petitioner's submission of documentation from <http://www.taxexemptworld.com>. According to information on that web site, the petitioner is not required to file Form 990 returns, because its annual income is less than \$25,000. Because the petitioner claims an intention to provide the beneficiary with \$24,000 worth of compensation each year, it is highly relevant that the petitioner's gross annual income is less than \$25,000.

The director must afford the petitioner the opportunity to provide the required evidence that it is, and has been ever since the September 2004 filing date, able to compensate the beneficiary at the full proffered rate. We stress that the petitioner must show that it has consistently been *able* to pay the proffered rate. Thus, for instance, it would be irrelevant to claim that the beneficiary voluntarily accepted lower pay during a period when the petitioner's income fell below expectations. If the petitioner was not able to pay the beneficiary \$1,000 per month as of September 2004, then no petition filed at that time can be approved.

Because of the outstanding and heretofore unaddressed issues regarding the petitioner's tax exemption and financial status, the record as it now stands cannot support approval of the petition. 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, regardless of the outcome, is to be certified to the Administrative Appeals Office for review.