

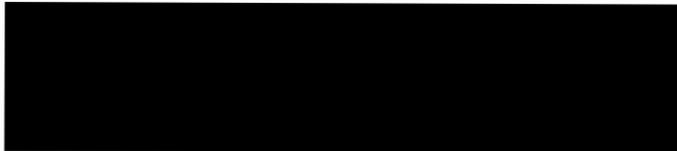
PUBLIC COPY



**U.S. Citizenship
and Immigration
Services**

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

C



FILE: WAC 04 203 52682 Office: CALIFORNIA SERVICE CENTER Date: **NOV 27 2007**

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, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the decision of the director and remand the petition for further action and consideration.

The petitioner is described as a Muslim association, including 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 (comparable to a minister). The director determined that the petitioner had not established that it is a qualifying tax-exempt religious organization, or that the beneficiary had the requisite two years of continuous work experience as an imam immediately preceding the filing date of the petition.

On appeal, the petitioner submits copies of Internal Revenue Service (IRS) documents and correspondence relating to the beneficiary's claimed employment experience.

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 . . . ; 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 AAO will first address the issue of the petitioner's tax status. 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization seeking to employ the beneficiary 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.

[REDACTED],¹ President and Chairman of the petitioning entity, stated in an introductory letter that the petitioner “has been granted tax exempt status under section 501(c)(3) of the Internal Revenue Code by the IRS in a group ruling issued to Muslim Students Association of the United States and Canada. A copy of the IRS’s confirmation of such tax exempt [status] is submitted herewith for your review.”

The petitioner submitted a copy of letter from the IRS, dated July 21, 2003 and addressed to the “Muslim Students Association of the United States & Canada / Hawaii” on South Beretania Street, Honolulu. This letter states that the named recipient “is included in a group ruling issued to [the] Muslim Students Association of the United States and Canada, which is located in Washington, DC.” The letter shows “Group Exemption Number: 5030.” The employer identification number (EIN) shown on the letter, [REDACTED] matches the EIN shown on the Form I-360 petition, but the address and name of the exempt organization in the letter do not match those of the petitioning entity.

The petitioner’s articles of incorporation do not mention the Muslim Students Association of the United States and Canada, much less establish any affiliation therewith. The articles, prepared in May 1996 and filed in February 1997, cite the same Aleo Place address that appears on the Form I-360 petition in 2004.

An undated brochure places “the Muslim Students’ Association of Hawaii, Inc.” at the petitioner’s Aleo Place address. The brochure does not mention the Muslim Students Association of the United States and Canada or the South Beretania address.

In a request for evidence (RFE) dated May 26, 2005, the director requested evidence that the petitioner is covered by a group exemption ruling, documentation to show that the petitioner is connected to the exempt organization at the South Beretania address, or other evidence that the petitioner is a qualifying tax-exempt entity. The director stated:

It appears that your religious organization may be part of a group ruling, regarding your organization’s tax exempt status. Therefore, provide evidence that your religious organization qualifies as a nonprofit religious organization. (Note: You may submit a directory if the petitioner has a group exemption approval.)

(Director’s emphasis.) In response, [REDACTED] stated: “The IRS letter granting tax exempt status was sent to the address of our accountant.” A copy of the accountant’s letterhead stationery shows the South Beretania address used on the IRS letter. Copies of IRS Forms W-2 issued by the petitioner for 2003 and 2004 show the [REDACTED]

The director denied the petition on July 12, 2007, in part because the petitioner had not satisfactorily established its tax-exempt status. The director stated “[t]he IRS letter contained in the record is not a group exemption certificate; it recognizes one specific organization, the Muslim Students Association of the United States & Canada located at [REDACTED] exempt from taxation.” The director added that the

¹ The record includes variant spellings of the surname [REDACTED]. For consistency, the AAO is using the spelling shown on the introductory letter submitted with the initial filing of the petition.

petitioner “has not provided a copy of IRS Form 1023 and the schedule A supplement that pertains to churches as required under 8 C.F.R. § 204.5(m)(3)(i)(B).”

On appeal, the petitioner submits documentation showing that it executed IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, on July 30, 2007, several weeks after the denial of the petition. This appears to be a revision of a form submitted previously, as a July 19, 2007 letter from the IRS begins “[w]e received your application for exemption from federal income tax.” On the Form 1023, the petitioner indicated that it was incorporated on February 4, 1997.

The petitioner also submits a copy of a July 31, 2007 letter from attorney [REDACTED] to the Internal Revenue Service. The letter reads, in part:

[An IRS representative] informed me that we already have 501(c)(3) tax exemption status . . . as The Muslim **Student** Association of Hawaii, under group exemption number 5030 issued to the Muslim Students Association of US and Canada. The Muslim Students Association of Hawaii, Inc., was involuntarily dissolved on November 30, 1990 by the State of Hawaii Department of Commerce and Consumer Affairs for failure to timely file its annual report. . . . Immediately after the dissolution of The Muslim Students Association of Hawaii, Inc. (“MSA,”) in 1990, our officials and members thought it appropriate for our organization to be known as **The Muslim Association of Hawaii** to reflect the new membership composition. We did this with the understanding that as a Mosque, **The Muslim Association of Hawaii**, automatically had 501(c)(3) tax exemption status. . . . The . . . address, place of worship and Employer Identification Number (EIN) remained the same as they were under the previous association’s name. . . . Subsequently (2-4-97), we incorporated as **The Muslim Association of Hawaii**.

(Emphasis in original.) The above assertions mark the first time in this proceeding that the petitioner had presented itself as essentially the successor in interest of a prior, now defunct, corporation.

The director was correct in finding flaws and deficiencies in the petitioner’s IRS documentation, but the decision cannot stand. For instance, the director did not address or acknowledge the petitioner’s documented explanation that the South Beretania address belongs to the petitioner’s accountant. Furthermore, the director, in the RFE, did not instruct the petitioner to submit IRS Form 1023; the RFE only instructed the petitioner to clarify questions surrounding the IRS letter submitted previously. The denial notice itself constituted the first mention of IRS Form 1023 as required evidence. The director, therefore, denied the petition in part because the petitioner had failed to submit documentation that the director had never requested.

Upon review of the record, the AAO finds that further explanation and evidence is necessary before a conclusion can be reached regarding the petitioner’s tax status.

As noted above, the petitioner submitted a copy of an IRS letter stating that the “Muslim Students Association of the United States & Canada / Hawaii” is covered by a group exemption held by the Muslim Students

Association of the United States & Canada with [REDACTED] The petitioner has filed annual IRS Form 990 returns, using the EIN shown on the IRS letter.

The petitioner concedes, however, that the Muslim Students Association of Hawaii was dissolved in 1990, more than a dozen years before the IRS issued its letter of July 21, 2003. The use of the old "Students Association" name suggests that the IRS may not have been aware of the 1990 dissolution of the Hawaii corporation or the petitioner's 1997 incorporation under a different name when it issued the July 21, 2003 letter. The petitioner's legal status between 1990 and 1997 is unexplained.

IRS Publication 4573, *Group Exemptions*, available online at <http://ftp.qai.irs.gov/pub/irs-tege/p4573.pdf> (visited November 19, 2007), contains the following information:

The central organization that holds a group exemption (rather than the IRS) determines which organizations are included as sub-ordinates under its group exemption ruling. Therefore, you can verify that an organization is a subordinate under a group exemption ruling by consulting the official subordinate listing approved by the central organization or by contacting the central organization directly. You may use either method to verify that an organization is a subordinate under a group exemption ruling.

The record contains nothing from the Muslim Students Association of the United States and Canada to confirm that the petitioning entity, as incorporated in 1997, is formally linked to the central organization or covered by the group exemption. Definitive evidence establishing a qualifying association must come from the central organization, not from the petitioner in Hawaii. A letter from an official of the petitioning entity in Hawaii cannot suffice, even if that official claims authority to speak on behalf of the central organization. The IRS letter in the record states that the central organization is based in Washington, D.C., not Hawaii, and there is no evidence that the central organization has relocated its headquarters to Hawaii.

With regard to the petitioner's continued use of the central organization's EIN, the petitioner has not demonstrated that the IRS is aware of the petitioner's somewhat tortuous corporate history. The petitioner's continued use of an EIN assigned to a central organization before the dissolution of the Muslim Students Association of Hawaii does not prove that the petitioner is, in fact, entitled to use that EIN.

A *current* edition of the central organization's official subordinate listing, showing the petitioning entity as a subordinate, would suffice as evidence that the petitioner is covered by the group exemption. An older edition that predates the 1990 dissolution, however, cannot suffice in this regard. It is not in dispute that the Muslim Students Association of Hawaii was covered by the group exemption prior to 1990. At issue is whether the petitioner is, for tax purposes, that same organization.

The above observations relate to the petitioner's initial claim of coverage under a group exemption. The petitioner's filing of a new Form 1023, however, might be construed as a stipulation that the petitioner has no such coverage (because to file for an already-recognized exemption would be redundant). If it is now the petitioner's position that the petitioner is an independent organization, with no close connection to any central organization holding a group exemption, then the petitioner must offer a persuasive and thorough explanation as

to why it previously claimed coverage under the group exemption. If the petitioner was not covered by the group exemption at the time of filing, then the petitioner's claim to the contrary may constitute material misrepresentation. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Citizenship and Immigration Services requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Commr. 1998); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971), which require that petitions for employment-based immigrant classification must be approvable based on the facts as of the filing date of the visa petition.

The AAO notes that, on the IRS Form 1023, the petitioner answered "No" to the questions: "Are you a **successor** to another organization?" (Part VII, line 1) and "Do you have a **close connection** with any organizations?" (Part VIII, line 15) (emphases in original).

Clearly, the question of the petitioner's tax status bears further inquiry. Pursuant to the foregoing, the director must seek to ascertain whether or not the petitioner was covered by the Muslim Students Association of the United States and Canada's group exemption as of the filing date, and if so, whether the petitioner continues to be so covered.

We note observation that "as a Mosque, [the petitioner] automatically had 501(c)(3) tax exemption status" without having to file a Form 1023. The petitioner remains, however, subject to the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), addressed in the denial notice, and therefore the petitioner must submit the documentation that the IRS would require to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

There remains the issue of the beneficiary's past work. 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 July 14, 2004. 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.

In his introductory letter, [REDACTED] stated that the petitioner "has been employed as an Imam . . . of our association since March 12, 2003," eight days after the beneficiary's arrival in the United States.

An unattested document indicates that, prior to his employment by the petitioner, the beneficiary worked for the Muslim Unity Center in Bloomfield Hills, Michigan from January 3, 2001 to September 20, 2002, and for the Islamic Center at Al Omraniya, Al Giza City, Egypt, from October 1, 2002 to February 28, 2003. Two letters from [REDACTED] President of the Board of Directors of the Muslim Unity Center, affirm the beneficiary's work there from January 2001 to September 2002. A translated letter from [REDACTED] Director of the Islamic Center at Al Omraniya, indicates that the beneficiary "was the Imam and Public Speaker of the Center from . . . 10/1/2002 to 2/28/2003 for a monthly payment of 700 Egyptian Gineh in addition to the 200 Egyptian Gineh for Transportation."

In the RFE, the director requested additional evidence of the beneficiary's employment and compensation during the qualifying period, and stated that such evidence should "ideally" include pay stubs or other direct documentation of payment. In response, the petitioner submitted copies of previously submitted letters and copies of IRS Form W-2 Wage and Tax Statements showing that the Muslim Center of Bloomfield Hills paid the beneficiary \$18,000 in 2002, and that the petitioner paid him \$23,628.96 in 2003 and \$30,000 in 2004.

In denying the petition, the director stated: "the petitioner submitted a letter from the Islamic Center [in Egypt] certifying that the beneficiary did in fact work at the Islamic Center. However, a letter alone is not sufficient to establish that the beneficiary was a full-time, salaried religious worker during the period."

The director's assertion that "a letter alone is not sufficient" is not consistent with pertinent regulations. 8 C.F.R. § 204.5(g)(1) states: "[e]vidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) . . . and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the submission of "[a] letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes . . . [t]hat, 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."

Certainly, there are times when questions exist and the director, pursuant to 8 C.F.R. § 204.5(m)(3)(iv), may request appropriate additional evidence relating to the eligibility of the alien. Here, however, the director did not specify why "a letter alone," from the entity identified as the beneficiary's former employer, "is not sufficient" to establish the beneficiary's past employment. In the RFE, the director did not state that the petition would be denied if the petitioner failed to produce documentation of past payment. Rather, the director stated that the petitioner's response would "[i]deally" include such evidence – suggesting that its submission was preferred but optional. The Islamic Center's letter in the record (a new translation of which accompanies the appeal) indicates that the petitioner was a full-time, compensated employee of the Islamic Center. The director has not explained how or why this letter is not credible or is otherwise deficient. In the absence of articulated doubts as to the credibility and/or authenticity of the letter, the regulations do not permit the director arbitrarily to dismiss properly detailed employer letters as insufficient.

The director must, pursuant to the above, explain specifically why the claimed employer letters are deficient or otherwise unacceptable.

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.