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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date:

DEC 30 2008

EAC 01 230 50899

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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) remanded the matter for further consideration and action. The director denied the petition a second time with a finding of fraud and, pursuant to the AAO's remand order, certified the decision to the AAO for review. The AAO will affirm the director's decision to deny the petition. The AAO will also enter a finding of fraud and willful misrepresentation of a material fact.

The petitioner is identified as a Muslim 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), purportedly to perform services as a religious teacher. The director determined that the director of the petitioning entity had been convicted of immigration-related fraud based on operation of a sham mosque (i.e., the petitioning entity) and therefore the petitioner had not established that the beneficiary had been or would be engaged in *bona fide* employment as a religious worker.

The petitioner has failed to submit any documentation on certification.

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).

In any employment-based petition, the proffered employment must be *bona fide*. Specifically, the regulations governing adjudication of religious worker petitions require that the petitioner be a "bona fide nonprofit

religious organization in the United States.” 8 C.F.R. § 204.5(m)(1) (2008) and 8 C.F.R. § 204.5(m)(3) (73 Fed. Reg. 72276, 72291 (Nov. 26, 2008)).¹

In this case, the director properly determined that the offer of prospective employment and the beneficiary’s claimed two years of prior employment with the petitioner were fraudulent because the petitioning entity was not *bona fide*. Specifically, on September 22, 2004, the director of the petitioning entity, [REDACTED] was convicted in federal court on eight criminal counts of visa fraud and related charges. (*U.S. v. [REDACTED]* (S.D.N.Y. 2005)). He was subsequently sentenced to a term of 51 months in prison. A September 23, 2004 press release from the United States Attorney, Southern District of New York, relates details of the charges:

[REDACTED] was convicted of all eight counts of an Indictment that charged him with conspiring to submit hundreds of false applications on behalf of illegal aliens under the Religious Worker Program . . . and to obtain genuine Social Security cards in false names. [REDACTED] was also convicted of making false statements to INS agents related to the investigation. . . .

According to the Indictment and as proved at trial, [REDACTED] filed fraudulent paperwork with the INS for numerous non-religious workers to obtain Religious Worker visas for which the aliens were not eligible in exchange for fees ranging from \$5,000 to \$8,000 in cash. [REDACTED] also orchestrated a complex fraudulent payroll scheme whereby he issued bogus payroll checks to the applicants on a bi-weekly basis, requiring the illegal aliens to return to him the amount of the check in cash, plus an additional amount that [REDACTED] told the aliens was required to pay his employer taxes. [REDACTED] then filed tax returns for the mosque, issued W-2’s to the applicants, and required them to file personal tax returns stating that they were employed as religious workers at the mosque. This scheme was operated to further deceive the INS into believing that [REDACTED]’s mosque was a large-scale entity with a burgeoning congregations served by [REDACTED]’s many religious workers. The Government’s evidence at trial showed that [REDACTED] drastically overstated the operations of his mosque and the size of his congregation.

* * *

The ICE [Immigration and Customs Enforcement] investigation revealed that [REDACTED] [REDACTED] was responsible for a massive scheme that brought hundreds of illegal aliens into the

¹ As required under section 2(b)(1) of the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391, 122 Stat. 4193 (2008), USCIS promulgated final regulations setting forth stricter standards with regard to all religious worker petitions. The statute extends the program for special immigrant nonministers contingent upon USCIS’ publication of final regulations “to eliminate or reduce fraud.” In this instance, because both the Service Center director and the AAO found that the petitioner was a fraudulent entity, it would be futile to remand this case for a second time simply to have the service center readjudicate the petition under the more stringent standards of the new regulations.

United States. None of these aliens were religious scholars, but instead were simply seeking entry into the United States under false pretenses.²

fraud conviction properly served as the basis for the director's finding that the petitioning entity was a sham mosque, and that the beneficiary had not been and would not be engaged in *bona fide* employment for a qualifying religious organization.

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

When a petitioning entity is known to be a sham organization and the individual who is the director of the sham organization is known to have been convicted of immigration fraud on a large scale, we cannot ignore that petitioner's inability to provide persuasive evidence in regard to individual petitions. 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). If U.S. Citizenship and Immigration Services (USCIS) fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Taking the above factors into account, we cannot find that the petitioner has submitted credible, probative evidence to show that the employment for the petitioner is a *bona fide* entity or that any employment for the petitioner has been or will be *bona fide*.

² See [http://www.usdoj.gov/usao/nys/pressreleases/September04/\[REDACTED\]convictionpr.pdf](http://www.usdoj.gov/usao/nys/pressreleases/September04/[REDACTED]convictionpr.pdf), accessed on December 29, 2008. Copy incorporated into the record of 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 director's decision to deny the petition is affirmed.

ORDER: The decision of the director is affirmed.

FURTHER ORDER: The AAO finds that the petitioner knowingly submitted documents containing false statements in an effort to mislead USCIS and the AAO on an element material to the beneficiary's eligibility for a benefit sought under the immigration laws of the United States.