

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

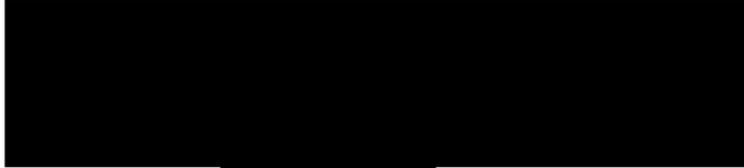
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, D.C. 20529-2090
MAIL STOP 2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

C1



FILE:



Office: TEXAS SERVICE CENTER

Date:

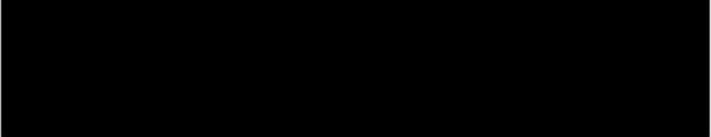
NOV 05 2008

SRC 03 188 52266

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, Texas Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is a Sunni Islamic organization. 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 was qualified to work as an imam.

On appeal, the petitioner submits arguments from counsel and several exhibits.

Section 205 of the Act, 8 U.S.C. § 1155, states: “The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.”

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In Matter of Estime, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for “good and sufficient cause” where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner’s failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the director’s realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Id.* The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 589.

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 first issue concerns the beneficiary's qualifications for the position offered. 8 C.F.R. § 204.5(m)(3)(ii)(B) requires the petitioner to establish that, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested.

The petitioner's initial submission included a copy of a 1999 certificate from the Graduate School of Islamic and Social Sciences, Leesburg, Virginia, indicating that the beneficiary "has completed a Master of Arts in Islamic Sciences degree with concentration in Shariah Sciences." Another photocopied certificate documents the beneficiary's 1995 "Master of Islamic Revealed Knowledge and Heritage" degree from the International Islamic University Malaysia.

The director approved the petition on July 29, 2003, but subsequently, on January 16, 2007, the director issued a notice of intent to revoke that stated, in part: "The petitioner submitted various certificates awarded to the beneficiary's, but did not provide any description of what was required of the beneficiary prior to his receipt of this documents. Thus, it cannot be determined that the beneficiary's prospective occupation is not a religious one" (*sic*). In response, the petitioner submitted a letter jointly signed by [REDACTED] and [REDACTED], respectively President and Vice President of the petitioning entity. Those officials stated: "Within the Muslim faith, [the beneficiary] has been recognized and is authorized to perform religious duties and conduct religious worship." The petitioner submitted copies of "numerous certificates and commendations he has received for his work, research, studies and experience." The petitioner asserted that the beneficiary "was already qualified to serve as an Imam" when he "first came to the US in order to continue his graduate education in Islamic studies."

In a copy of an August 20, 1999 letter, [REDACTED], an official of the International Islamic University Malaysia, stated: "In any Muslim society, [the beneficiary's] qualifications of Masters in Islamic Studies would instantly qualify him to become an *Imam* (religious scholar) in any mosque, or Islamic Center." In a November 12, 1999 letter written to support an application for R-1 nonimmigrant status on the beneficiary's behalf, [REDACTED] a, Director of the El Farouq Foundation in Houston, Texas, stated that the beneficiary's educational credentials "alone would entitle [the beneficiary] for the position of Imam." Mr. [REDACTED] added that an "Imam is a learned person who knows the Quran, the sacred book of the Islamic religion, chosen by the congregation."

The director revoked the approval of the petition on March 9, 2007, stating: “The petitioner submitted various certificates awarded to the beneficiary’s [sic], but did not provide any description of what was required of the beneficiary prior to receipt of these documents.” The director stated that it cannot suffice simply to assert that “the beneficiary has met all required training and experience,” without identifying the required training and experience. The director found that the record lacks “a document such as an ordination certificate indicating that the beneficiary has been conferred [sic] into an Imam.”

On appeal, counsel states: “All of [the beneficiary’s] religious education and experience forms the basis of his training and qualifications to serve as a religious leader, teacher, Imam, Sheikh, or minister within the Muslim faith.” To support this assertion, counsel cites several previously submitted exhibits, including the letter from [REDACTED] that the director never mentioned in the revocation notice, as well as a new sworn statement from [REDACTED], President of the North America Imams Federation. Dr. [REDACTED] states that there are no “specific, rigid and limited criteria globally within the world of Islam” with regard to the qualifications of an imam. He asserts that the “consensus [is] that an Imam or a religious scholar must possess [nine listed] qualifications.” Many of the listed items are more properly classified as “duties” rather than “qualifications,” such as “[b]e a role model to members of his community” and “[l]ead and participate in activities involving births, marriages, funerals and any applicable social, civic and cultural events.” The listed item most properly considered an *a priori* qualification is “an in depth understanding and knowledge of the Holy Quran and the traditions of the Holy Prophet (Peace Be upon Him).”

Counsel asserts that the beneficiary must be qualified to work as an imam, because the petitioner has hired him to work as one. The AAO rejects this particular argument. The Board of Immigration Appeals has found that “Congressional policy in the field of immigration could be readily circumvented by accommodating religious organizations” if requirements were relaxed to the point that a petitioning religious organization could simply assert that a particular alien is a minister. *Matter of Rhee*, 16 I&N Dec. 607, 610 (BIA 1978). Clearly, we cannot simply take the petitioner’s word for it that the beneficiary is a qualified imam.

Nevertheless, while the burden of proof is on the petitioner to establish eligibility, this does not entitle the director to make presumptions outside the record and then place the onus on the petitioner to rebut those presumptions. The record contains no indication that Sunni Islam has any formal investiture, comparable to ordination, to confer the title of “imam.” Rather, the available evidence and testimony (including materials discussed and quoted above) demonstrate that one becomes an imam simply by attaining a particular level of knowledge and expertise. The record does not clearly show what that level is (if it is, indeed, a fixed level rather than a subjective determination made by individual congregations), but it does indicate that the beneficiary (with his graduate-level education in Islamic theology and related subjects) has surpassed it. Witnesses in an evident position of authority have consistently attested that the beneficiary is, and has been for some time, a fully qualified imam.

Finally, it must be noted that the A-file record of proceeding contains discrepancies with respect to the beneficiary’s claimed qualifications. In support of the instant petition, the ISGH provided evidence that the beneficiary holds the following degrees:

- Bachelor's degree in Islamic Jurisprudence from [REDACTED] Islamic University in Malaysia in 1991
- Master of Islamic Revealed Knowledge and Heritage from International Islamic University Malaysia, issued on August 8, 1995
- Master of Arts in Islamic Sciences with Concentration in Shariah Sciences issued by the Graduate School of Islamic and Social Sciences in Leesburg, VA, issued on August 28, 1999

At the time the petitioner submitted the instant petition, the beneficiary was present in the United States as the beneficiary of an approved R-1 nonimmigrant petition filed on Form I-129, also filed by ISGH. The petition was filed in December of 2002, six months prior to the Form I-360 that is now on appeal, and has a validity period of April 12, 2003 through December 31, 2004 (SRC 03 058 52644).¹ Evidence submitted with the nonimmigrant petition includes a letter dated December 13, 2002, from the attorney of record. The letter lists evidence relating to the beneficiary's eligibility, including the above diplomas and a fourth diploma showing that the beneficiary obtained a Ph.D. in Islamic Studies from an Israeli business:²

- Doctor of Philosophy from University of Wexford based on "original research summa cum laude -- with greatest distinction in Islamic Studies," issued on June 15, 2001.

The Ph.D. diploma issued by the Israeli business, while included with the Form I-129 application, was not submitted with the Form I-360 petition that is before us on appeal. In fact, section 32.52 of the Texas Penal Code generally prohibits the beneficiary's use of this degree.³ It is unclear why the petitioner submitted the diploma as evidence with the prior R-1 nonimmigrant application but not with the Form I-360 that is on appeal. Nevertheless, according to other evidence in the record and for all of the reasons discussed above, the beneficiary is qualified for the proffered position based solely on his baccalaureate and master's degrees from the University of Malaysia.

For the above reasons, the AAO finds that the petitioner has demonstrated that the beneficiary is qualified for the position of an imam. The director's desire for stronger or more definitive evidence, while not irrational, does not inherently undermine or discredit what the petitioner has submitted. The AAO withdraws the director's finding in this regard.

¹ The Form I-360 that is under review, as well as the 2003 Form I-129 and other petitions filed on behalf of the alien, are currently contained within the alien's A-file record of proceeding.

² The "University of Wexford," based in Israel rather than Wexford, England, was not a *bona fide* educational institution. It was part of an international diploma mill that sold fraudulent degrees until a United States/United Kingdom joint operation led to its 2003 closure. The Federal Trade Commission fined its owners, [REDACTED] and [REDACTED] and [REDACTED]. See http://news.bbc.co.uk/2/hi/uk_news/education/2829237.stm, accessed on November 4, 2008. See also <http://chronicle.com/free/v50/i42/42a01401.htm>, accessed on November 4, 2008. Copies incorporated into the record of proceeding.

³ See <http://tlo2.tlc.state.tx.us/statutes/pe.toc.htm>, accessed on November 4, 2008. See also <http://www.thecb.state.tx.us/AAR/PrivateInstitutions/NoTX.cfm>, accessed on November 4, 2008. Copies incorporated into the record of proceeding.

Notwithstanding the above discussion, another issue remains that precludes approval of the petition. That issue concerns the beneficiary's experience. 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 June 26, 2003. 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.

A "Detail of Payroll for the Period June 30 2003" lists an \$832 payment to the beneficiary. The document was submitted before June 30, 2003, and therefore could not reflect conditions as they existed on June 30, 2003. This is the only documentation in the petitioner's initial submission that relates to the beneficiary's compensation in 2003.

An uncertified copy of the beneficiary's 2002 federal income tax return shows \$29,831 in wages and salaries. Copies of Internal Revenue Service (IRS) Form W-2 Wage and Tax Statements indicate that the petitioner paid the beneficiary \$23,030.50 in 2002, and the Islamic Education Institute of Texas paid the beneficiary \$6,800.00 that same year. The sum of these figures, rounded to the nearest dollar, match the total salary claimed on the beneficiary's 2002 tax return. An uncertified copy of the beneficiary's 2001 income tax return shows \$15,932 in wages and salaries, matching the amount shown on a 2001 IRS Form W-2 from the petitioner.

The petitioner also submitted uncertified copies of the beneficiary's 1999 and 2000 income tax returns, which fall outside the June 2001-June 2003 qualifying period. The 2000 return included an IRS Form W-2 showing \$16,800.00 from the petitioner; the 1999 return included an IRS Form 1099-MISC showing "Nonemployee compensation" from the International Institute of Islamic Thought. The beneficiary amended his 2000 return in April 2002 in order to account for "clergy housing allowance."

In the January 16, 2007 notice of intent to revoke, the director stated:

Subsequent to the date of approval, a review of the file determined that the I-360 petition did not include various documents needed for the approval of this petition. . . .

Although the tax returns indicate compensation to the beneficiary, the evidence on hand fails to demonstrate the duties performed by the beneficiary during the time frame in question.

Absent a detailed description of the beneficiary's employment history in the United States, supported by corroborating evidence such as certified tax documents, the Service is unable to conclude that the beneficiary had been engaged in any particular occupation, religious or otherwise, during the two-year qualifying period.

Also, you are to provide evidence demonstrating all occupations held by the beneficiary since he/she entered the U.S. . . .

The petitioner must submit:

- 2001, 2002, 2003, 2004 and 2005 federal tax returns, annual reports or audited financial statements
- Please submit a copy of Form 941, Quarterly Tax Report, for each quarter in 2001, 2002, 2003, 2004, and 2005.
- Submit copies of the beneficiary's W-2 for the year 2003.
- Submit a list of all employees salaried and non-salaried including their names, job title and salaries.

In response, counsel protested that the director requested a volume of documentation, and a degree of detail, unwarranted by the statute and regulations. [REDACTED] and [REDACTED] stated that the beneficiary "was chosen to serve as an Imam for our Muslim worshipers in our Mosques and schools in March, 2000. He has served continuously in that position, with increasing leadership responsibilities, since that time." The petitioner indicated that the Islamic Education Institute of Texas "is a wholly owned subsidiary of" the petitioning entity, and therefore all of the beneficiary's documented compensation in 2001 and 2002 was from the petitioner. The petitioner also stated that the beneficiary "is currently paid wages for his full time employment in the amount of over \$3000 per month." An "Employee List" lists the beneficiary's monthly wage at \$3,203.

The petitioner submitted uncertified copies of the beneficiary's 2003 tax documentation, including IRS Forms W-2 indicating that the beneficiary received \$22,345.10 from the petitioner and \$15,550.00 from the Islamic Education Institute of Texas that year. The corresponding tax return shows no other income. The 2003 tax return lists the beneficiary's occupation as "religious teacher," and an accompanying Schedule C indicates that the beneficiary's "Principal business or activity" is "education." Also among the 2003 tax documents is a Form 4562 that lists the beneficiary's "Business or activity" as "Form 2106 clergy."

An "Employment History" indicated that the beneficiary worked from "March 2000 to Dec. 31, 2000" and "all of 2001" as an imam for the petitioner, and also for the International Islamic Online Foundation on a "part time, periodic [basis] during 2001," "Consulting as [a] Religious Teacher" by "Answering email questions as [a] Muslim scholar." The petitioner indicated that the beneficiary earned "\$5306 in 2001" working for the International Islamic Online Foundation.

The petitioner submitted a copy of an amended tax return for 2001, dated November 26, 2003 (after the petition's filing date), indicating that the beneficiary had originally neglected to report "business income" of \$5,306 (before expenses). This return does not comply with 26 C.F.R. § 1.6695-1(b)(1) because it does not include the preparer's signature. The beneficiary indicated that he had lost the IRS Form 1099-MISC Miscellaneous Income statement from the International Islamic Online Foundation, in the amount of \$5,306. A July 21, 2003 letter from the IRS confirms the existence of that missing document.

In the revocation notice, the director stated that the petitioner had not submitted the “certified tax documents” requested previously, and observed that some of those tax documents identified the beneficiary’s principal business as “education” and his occupation as “religious teacher.” The director also found that:

the proffered wage is \$3000 a month or about \$36,000 a year. Although the beneficiary has been working for the petitioner, the beneficiary has not been compensated the total proffered wage. Therefore, it cannot be determined that the beneficiary has been working on a full time religious occupation during the time frame in question.

On appeal, the petitioner submits IRS transcripts of the beneficiary’s 1999-2006 income tax returns. The figures on these transcripts match the uncertified copies of returns submitted previously (including the amended 2001 return). Regarding the petitioner’s prior failure to submit certified copies of the tax returns, counsel correctly notes that “certified copies of the tax returns were never directly requested by the director” (counsel’s emphasis). Counsel also observes that the list of materials that the petitioner “must submit” did not include certified copies of the beneficiary’s tax returns. Rather, the director had noted the absence of “corroborating evidence *such as* certified tax documents” (emphasis added), indicating that certified tax documents were merely an example of corroborating evidence that might be provided in response to the notice of intent to revoke.

With respect to the petitioner’s submission of two Forms W-2 for 2002, the petitioner had indicated that the Islamic Education Institute of Texas is the petitioner’s “wholly owned subsidiary,” and the director did not dispute this assertion. In a related vein, the references to the beneficiary as a “religious teacher” engaged in “education” are not inconsistent with work as an imam. The record indicates that the role of an imam is not limited to leading a congregation and performing religious rites. Rather, an imam may also function as an educator and scholar, comparable to a Jewish rabbi. For example, in an attachment to the Form I-360 petition, the petitioner explained that the beneficiary’s “duties include leading special Friday prayers, conducting funeral prayers, conducting marriage ceremonies, performing religious counseling, teaching Arabic language, and teaching the recitation, meaning and memorization of the Holy Qur’an.” In this case, the petitioner has established that educational activities are not inconsistent with or interruptive of the beneficiary’s duties as an imam. Furthermore, the 2003 tax documents that refer to “education” also refer to the beneficiary as “clergy,” a designation that is obviously compatible with the beneficiary’s work as an imam.

The director correctly noted that the beneficiary’s annual earnings during the qualifying period were considerably less than \$3,000 per month, but there is no evidence that this was the “proffered wage” in 2001-2003. The \$3,000 figure first appeared in correspondence dated 2007. In a December 16, 2002 letter, [REDACTED], President of the petitioning entity, stated that the beneficiary’s “annual salary is \$24,000 and \$400 per month accommodation allowance.” Mr. [REDACTED] did not indicate when the beneficiary purportedly began receiving that rate of compensation.

In considering the claims and evidence submitted on appeal, the AAO conducted additional inquiries of public records. According to a publicly available database maintained by the County Clerk of Harris County,

Texas,⁴ the beneficiary is an owner of three general partnerships (Al-Barakah Cultural Association, Algerian Cultural Association of Houston, and Patio and Fireplace Houston) and the owner and sole proprietor of US-Shakespeare's Import & Export [*sic*]. A Certificate of Ownership for Unincorporated Business or Profession lists the beneficiary's residence as the place of business for US-Shakespeare's Import & Export. The beneficiary filed the certificate on June 9, 2003, less than three weeks before the petition's filing date. This filing is *prima facie* evidence of the beneficiary's intent to operate and engage in a secular business, and is incompatible with the claim that the beneficiary was engaged solely as an imam, with no other employment, during the two-year period ending June 26, 2003. The beneficiary's subsequent involvement as an owner of Patio and Fireplace Houston (according to papers filed on October 15, 2004) further indicates the beneficiary's intent to pursue secular business ventures in the United States. Involvement in either of these secular business ventures is inconsistent with an intention to work solely in the ministerial vocation of an imam, as section 101(a)(27)(C)(ii)(I) of the Act requires.

According to bank records obtained via a subpoena served on May 13, 2008, the beneficiary established a "Business Interest Checking" account for US-Shakespeare's Import & Export on June 11, 2003, claiming that his Social Security number was the company's Employer Identification Number. The next day, June 12, 2003, the beneficiary deposited \$3,000 into the account.

The beneficiary also maintained a joint checking account with his spouse. Although the beneficiary's income tax returns show only \$89,648 in income for 2001 through 2003, the bank records reflect \$204,037.06 in deposits and credits between June 8, 2001 and December 16, 2003, including a single \$30,500.00 deposit on October 14, 2003. Thus, the bank records show that the beneficiary received over \$100,000 in unreported income during the qualifying period.

On several documents, including his résumé and on Form G-325A, Biographic Information, the beneficiary claimed no employment except with the petitioning entity beginning in early 2000. The above information, however, contradicts that claim.

On August 29, 2008, the AAO notified the petitioner of the above information. The AAO's notice reads, in part:

[T]he AAO has information indicating that your organization and the beneficiary have misrepresented the beneficiary's employment history by failing to disclose significant income and business activities. . . .

The beneficiary's identification as an owner of Patio and Fireplace Houston, his ownership and registration of US-Shakespeare's Import & Export as a sole proprietorship doing business from his residence, and his substantial additional income from unidentified sources (which the beneficiary failed to report on his tax returns), cast very serious doubt on the claim that the beneficiary has been or intends to be engaged solely as an imam. The AAO is of the opinion that your organization's failure to disclose any of this information, even after it

⁴ http://www.cclerk.hctx.net/coolice/default.asp?Category=AssumeNames&Service=an_inquiry (visited May 12, 2008).

became clear that the beneficiary's finances were material to the proceeding and of particular interest to the AAO, constitutes fraud and willful misrepresentation of a material fact. The beneficiary has participated in this fraud and misrepresentation by providing alleged employment histories and income tax returns that made no mention of what appear to be lucrative secular business ventures.

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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). 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. *Id.* at 582, 591-92.

Section 212(a)(6)(C)(i) of the Act states: "Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible." Absent independent and objective evidence to overcome, fully and persuasively, our above finding, the AAO will dismiss the appeal and enter a formal finding of fraud and willful misrepresentation of a material fact into the record. This finding can be considered in future proceedings in which the beneficiary's admissibility is an issue. You may choose to withdraw your appeal, but this will not prevent a finding that the beneficiary has sought to procure immigration benefits through fraud and willful misrepresentation of a material fact.

In response to the AAO's notice, the petitioner submits numerous statements and documents. [REDACTED] the petitioner's Vice President and Acting President of the Board, addressed several points on behalf of the petitioning entity. The petitioner also submits a new statement from the beneficiary. Many of the beneficiary's and [REDACTED] assertions address statements by the AAO that were intended simply as descriptive, rather than as derogatory. For instance, [REDACTED] defends the beneficiary's reporting of \$684 from the University of Missouri on his 2003 income tax return. In making this observation, the AAO did not intend to indicate anything inappropriate about that transaction; the AAO was simply categorizing the beneficiary's claimed and reported income, for the purposes of distinguishing it from other income that the beneficiary had failed to claim on his tax returns.

[REDACTED] states that Al-Barakah Cultural Association and the Algerian Cultural Association of Houston "were intended to be non-profit social clubs" and that "such organizations are commonly formed by members of [the petitioning entity] and their friends and families in the Houston area." While the AAO noted the beneficiary's formation of these organizations in its notice, the AAO's primary concern was with Patio and Fireplace Houston and US-Shakespeare's Import & Export, neither of which are "non-profit social clubs." Regarding those two entities, [REDACTED] states:

[The petitioner] has no reason to believe that [the beneficiary] was ever employed by 'US-Shakespeare's Import and Export,' as we would have known about that. [The beneficiary]

has advised us that he filed an Assumed name certificate for US-Shakespeare's Import and Export, but that his organization never did any business, had no activities, and neither he nor anyone else were ever employed by that organization. . . .

Concerning Patio and Fireplace Houston, we would like to point out that at the time that you allege that [the beneficiary] became affiliated with this company in October, 2004, the I-360 [petition] . . . had been approved, and an Application for Adjustment had been filed for [the beneficiary]. Pursuant to that application, he filed an application for an Employment Authorization Document, which was granted. We have no knowledge that [the beneficiary] was ever employed by Patio and Fireplace Houston, but he informs us that he served with that company to try to settle issue between the two owners, who were . . . members [of the petitioning society] in distress. He has told us that he served as an advisor and counselor. It is our understanding that persons with an EAD from the USCIS may be employed by any business, however, [the beneficiary] remained a full time employee of [the petitioner], and to our knowledge was not employed by any other company.

The beneficiary states:

Sometime in 2004, I was approached by two members of our Muslim community, Mr. [REDACTED] and [REDACTED]. These gentlemen were business partners who were operating a business known as Patio and Fireplace Houston. They were having personal and business difficulties with each other and came to me for counseling and advice to try to ease their problems. After some number of meetings and efforts, these men ask[ed] me to serve as a nominal partner in their organization to mediate their differences in business decisions. They requested that my name be added to their organization[']s Assumed Name listing, so that I would be a "tie-breaker" in their disputes. I agreed to do that in order to help them keep their business alive. I was added to their listing in October of 2004, and again listed in March of 2005. However, I never participated in any of their business activities, other than to visit with them periodically for a few months, and assist with some of their paperwork and efforts to make the business work. . . . I believe that the business partners may have paid me some payments for my efforts, but I never was paid as or considered as an employee, or even as a "partner" since I did not participate in the business activities. . . . Since I had my Employment Authorization Document or card at that time, and I had been told that I could "work" at any business under that card, it never occurred to me that this activity would cause any problems. Frankly, I viewed it more as a consulting effort to try to seek better cooperation between the two owners.

The beneficiary's vague assertion that "the business partners may have paid" him is of interest, as it indicates remuneration for secular work undertaken on behalf of Patio and Fireplace Houston. The beneficiary maintains that he was not paid "as an employee," but for immigration purposes, compensation received in exchange for work performed constitutes "employment," whatever the form of that compensation, and whatever term was used to describe it. *See Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982).

We will revisit the issue of remuneration for secular work shortly. First, we emphasize that the beneficiary does not indicate that there were more than “two owners” or that he interacted with anyone other than “two members of our Muslim community, [REDACTED] and [REDACTED].” The petitioner submits an affidavit from [REDACTED], who states:

In 2004 . . . [REDACTED] asked me to join him in a business called Patio and Fireplace Houston. . . . I agreed, and we began to work together. . . . He and I argued, and we eventually consulted with [the beneficiary], as our Imam, seeking his advice to help us resolve our differences. We finally asked [the beneficiary] to join us in the business so that he could guide us on decisions and perhaps make peace between us, and be a deciding vote on decisions. He agreed and for a short time he would come to the business and help us with the paperwork. . . . After perhaps four or five months, he gave up and told us he could not help us.

[REDACTED] in the statement quoted above, identifies himself as [REDACTED] business partner. The beneficiary, however, identifies [REDACTED] partner as “[REDACTED].” Mr. [REDACTED] does not mention [REDACTED] by name, nor does he refer to additional partners other than [REDACTED]. This significant discrepancy does not resolve the credibility issues in this proceeding. Section 204(b) of the Act, 8 U.S.C. § 1154(b), provides for the approval of immigrant petitions only upon a determination that “the facts stated in the petition are true.” False, contradictory, or unverifiable claims inherently prevent a finding that the petitioner’s claims are true. See *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Systronics Corp. v. I.N.S.*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988).

Regarding US-Shakespeare’s Import and Export, the beneficiary states:

In June of 2003, I registered the Assumed name of US-Shakespeare’s Import & Export with the Harris County Clerk. At the time, I was anticipating the granting of my Permanent Resident Visa in the near future, so I believed that I would be remaining in the US working as an Imam. My family and some friends in Algeria had told me that if I would get certain goods and equipment and export the goods to them, they would be able to possibly use or sell the goods in Algeria to benefit the people there. I thought that I would need a company to do that, so I registered the name. I then opened a business checking account with a deposit of \$3000 of my own funds. . . . I even used my own social security number since I did not have a business tax identification number. I thought that perhaps in the future I could send them the materials that they wanted, and I thought that perhaps I could get a bit of profit to supplement my income as an Imam. In actuality, I never had any business transactions, never made any purchases or exports, and never had any income because I never conducted any sort of business. . . . Although there existed the possibility that this company might “do business,” it was never my intention to have any business activity for myself particularly.

The beneficiary’s assertion that he believed he “could get a bit of profit” from the business is an admission of disqualifying intent to engage in remunerative secular activities. 8 C.F.R. § 204.5(m)(1), echoing the

language of section 101(a)(27)(C)(ii)(I) of the Act, requires that the alien seeks to enter the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination. Any engagement or intent to engage in secular employment, whether full-time, part-time, or incidental, demonstrates a purpose other than carrying on the vocation of a minister. We acknowledge the petitioner's claim that US-Shakespeare's Import and Export never made any money, but the very existence of the company, from which the beneficiary anticipated "a bit of profit," demonstrates intent to perform non-ministerial work (whether or not the beneficiary actually performed such work). The failure or inactivity of the company does not nullify or mitigate such evidence of intent.

Regarding the substantial deposits into his bank account, which he did not report as income, the beneficiary states:

For many years . . . many, many of our loving and wonderful members of the Muslim community have blessed us with gifts, gratuities, and donations to help me improve life for my family. . . . In our case, a movement began among our Muslim faithful to start contributions to me and my wife in an effort to help us purchase a home for our family. . . .

In addition, some members have given us Muslim loans. Because the Qur'an does not allow the requirement of interest payment for loans, or the receipt of interest with repayment of loans, when a Muslim makes a loan to another Muslim, it must be made without interest charges. . . . One of the largest loans was for \$30,000, which we have been repaying as we can. . . . The increase of funds in our bank accounts over the years were all from my earnings, the gratuities and honorariums paid for my services as an Imam, and the gifts and loans for our savings. . . .

In December of 2004, we were so happy to be able to purchase our home in Houston, and we paid cash by a cashier's check in the amount of \$106,654.59.

The petitioner submits affidavits from several individuals who identify themselves as members of the petitioner's congregation and state that they loaned or gave considerable sums of money to the beneficiary "[d]uring the period of 2001-2003." The documents are nearly identical "form" affidavits, with blank spaces for witness names and dollar amounts. [REDACTED] states that he loaned the beneficiary "\$30,000.00 to help with the purchase of a residence for him and his family." None of these affidavits is accompanied by processed checks, bank documents, or other evidence of any financial transaction between the beneficiary and the respective affiants. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)). The petitioner also submits documentation of his December 29, 2004 purchase of a home, including a copy of a receipt for a cashier's check for \$106,654.59, payable to Stewart Title Company.

We note that the petitioner indicated (in a December 16, 2002 letter from [REDACTED] that the beneficiary's compensation included "\$400 per month accommodation allowance." The assertion that the

petitioning organization was responsible for providing the beneficiary's housing is not consistent with the new claim that members of the congregation individually contributed toward buying the beneficiary a house.

As noted previously, the beneficiary's bank records reflect \$204,037.06 in deposits and credits between June 8, 2001 and December 16, 2003. Although the beneficiary claims that these funds were intended to purchase the beneficiary's house, the same records show substantial withdrawals long before he purchased the home in December 2004. The beneficiary's starting balance in June 2001 was \$18,567.08. At the end of 2003, the beneficiary's ending balance was \$70,011.61. By adding the beneficiary's starting balance to his subsequent deposits and then subtracting the ending balance, we calculate that the beneficiary withdrew \$152,592.53 from his account during that time. These withdrawals were in amounts ranging from \$20.83 to \$17,262.83 each month. There is no evidence that these numerous large withdrawals from 2001 to 2003 went toward the lump-sum purchase of the beneficiary's house in December 2004. The petitioner and the beneficiary have not adequately explained the significant cash flow through the beneficiary's account, in transactions that appear to have nothing to do with the beneficiary's purchase of a house several years later. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici* at 165 (Commr. 1998).

The petitioner's and the beneficiary's explanations regarding the beneficiary's significant additional income lack documentary support. The beneficiary, by his own admission, hoped to supplement his income by establishing US-Shakespeare's Import and Export during the two-year qualifying period, and the beneficiary has also alluded to receiving payment for his later work with Patio and Fireplace Houston. The AAO concludes that the beneficiary engaged, or intended to engage, in disqualifying secular employment both before and after the petition's filing date.

Section 101(a)(27)(C)(ii)(I) of the Act does not permit the approval of a petition for a special immigrant minister who does not seek to enter the United States solely to carry on the vocation of a minister, and section 101(a)(27)(C)(iii) of the Act precludes the approval of a petition for a special immigrant minister who was not solely engaged in the vocation of a minister during the two years immediately preceding the filing of the petition. An alien seeking classification as a special immigrant minister must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought, and must intend to be engaged solely in the work of a minister of religion in the United States. *See Matter of Faith Assembly Church*, 19 I&N 391, 393 (Commr. 1986). We note that the Ninth Circuit Court of Appeals has upheld the AAO's interpretation of the two-year experience requirement. *See Hawaii Saeronam Presbyterian Church v. Ziglar*, 2007 WL 1747133 (9th Cir., June 14, 2007).

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.