

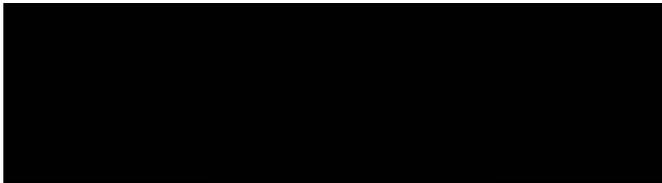
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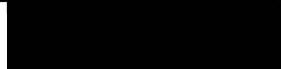
U.S. Citizenship
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Services

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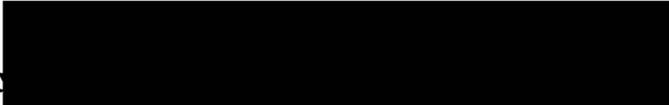
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Office: CALIFORNIA SERVICE CENTER

Date: OCT 21 2008

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.

A handwritten signature in cursive script, appearing to read "Maiphusse".

2 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California 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 appeal will be dismissed.

The petitioner is an Islamic society that operates schools and 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. 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 that the beneficiary's position consistently related to a particular religious function.

On appeal, the petitioner submits a brief from counsel. In that brief, counsel offers numerous procedural objections which, counsel argues, should have precluded the director from revoking the approval of the petition. 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 Esteime*, . . . 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 un rebutted, 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 Esteime*, 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.

Counsel argues that the director has made no "allegation of misconduct on the part of USCIS personnel for what would be a gross error or outright misconduct in approving the I-360, if so blatantly un-approvable." Counsel fails to explain the relevance of this observation. (Counsel does not, for instance, stipulate that his client would concede the revocation and drop the appeal if the director were to produce proof of disciplinary

action against the adjudicator who approved the petition.) Unswayed by counsel's procedural arguments, the AAO will consider the matter on its merits.

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 first issue under consideration is whether the petitioner seeks to employ the beneficiary in a qualifying capacity. Citizenship and Immigration Services (CIS) regulations at 8 C.F.R. § 204.5(m)(2) put forth the following pertinent definitions:

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

Religious occupation means 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.

The petitioner's initial filing included a cover letter from then attorney of record [REDACTED] who stated that the submission included "correspondence reflecting [the beneficiary's] past and current role as a volunteer religious instructor and describing the full-time religious instructor position he is being offered." No job title appeared in the initial submission outside of this cover letter.

In an October 16, 1998 letter accompanying the initial filing, [REDACTED], then the petitioner's Vice President, stated that the beneficiary "has regularly delivered sermons during Friday congregational prayers and at holiday gatherings. [The beneficiary] has also provided religious instruction to adult and youth groups."

In a subsequent letter, dated March 23, 1999, [REDACTED] listed the qualifications of an imam and stated that the beneficiary meets those qualifications, thereby implying that the beneficiary was to work as an imam. Mr. [REDACTED] stated: "An Imam, or religious leader, is a learned individual who delivers sermons, conducts religious services, holds religious classes and lectures and serves as a religious authority."

In a March 20, 1999 affidavit, [REDACTED], "senior Imam and religious director" at the petitioning society, stated: "in my absence and on my days off, [the beneficiary] provides all of the services that I would otherwise provide, including, leading prayers, delivering sermons and conducting religious discussion groups and lectures." He also stated the petitioner's "need for an additional Imam."

The director approved the petition on April 1, 1999. On March 30, 2001, the beneficiary filed a Form I-485 adjustment application, including Form G-325A, Biographic Information. On Form G-325A, the beneficiary initially indicated that he had worked for the petitioner as a "Religious Instructor" since July 1999. That date was then partially obscured with correction fluid, and changed to June 1994.

In the June 25, 2007 notice of intent to revoke, the director stated that it was not clear whether the beneficiary was "acting strictly as an Imam" or "a person acting as an Imam and additionally acting as a religious instructor." The director also stated: "a review of the web site for the [petitioner's] Salam School reveals that the school lists the beneficiary as a teacher of Islamic Studies."

An April 16, 2007 printout from the Salam School's web site, <http://www.salamschool.net/faculty.htm>, describes the beneficiary as "Teacher – Islamic Studies," but it also refers to the beneficiary as "ISM Imam." "ISM" is the initials of the petitioning entity. The director failed to mention this material fact.

In response to the notice of intent to revoke, [REDACTED] asserted that, although "[t]here is no ordination process for Imams," "an Imam in the Islamic faith is comparable, in many ways, with a Pastor, Reverend or Rabbi." Mr. [REDACTED] also asserted that religious instruction is a major duty of imams.

In revoking the petition, the director stated:

The USCIS agrees that religious teaching could be consistent with the duties of an Imam. However, the record still lacks sufficient details for USCIS to determine whether the beneficiary is a religious instructor at the Salam School as an integral part of his duties as an

Imam or the beneficiary is a religious teacher at the school because there is not a full-time position for the beneficiary as an Imam.

The issue at hand is not whether each of the duties being performed by the beneficiary qualifies as [the duties of a] religious worker. The issue is whether the proffered position is a single full-time position that relates to a traditional religious function. The evidence of record lacks sufficient detail for the USCIS to determine whether the duties of the beneficiary's prospective occupation relate to a single traditional religious function.

On appeal, counsel argues that the director's decision lacks clarity, such that it is difficult to discern the exact nature of the director's concerns. For example, the director has conceded that the religious nature of the beneficiary's work is not in dispute, but concluded that the petitioner has not established that the employment is qualifying. The difficulty appears to be the shifting ratio of the beneficiary's duties as an imam *versus* his duties as a religious instructor. The AAO also agrees with counsel's assertion that the duties of an imam and a religious instructor are, to a degree, complementary rather than in conflict.

The record indicates that the duties of an imam include, but are not limited to, educational and instructional functions that are consistent with what appears to be ancillary work at Salam School. Also, keeping in mind the petitioner's observation that "an Imam in the Islamic faith is comparable, in many ways, with a Pastor, Reverend or Rabbi," we find that the beneficiary's position as the leader of the congregation and director of religious services is essentially that of a minister. The AAO withdraws the director's finding that the petitioner has not established the qualifying nature of the proffered position.

The remaining issue concerns the beneficiary's past 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 October 30, 1998. 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 October 16, 1998 letter, _____ described the beneficiary's past experience:

Since June, 1994, [the beneficiary] has voluntarily provided a wide variety of services for our organization. . . . During the past three years, we estimate that [the beneficiary] has spent at least 25 hours per week providing various services to our organization.

Now that [the beneficiary] is completing his responsibilities as a doctoral student, it is our hope that [the beneficiary] will have the opportunity to join our organization as a permanent full time employee. In addition to performing and expanding upon many of the activities and functions which [the beneficiary] has performed in the past, our organization would also like

to have [the beneficiary] serve as our representative at various interfaith meetings and conferences, both local and national.

In his subsequent letter of March 23, 1999, [REDACTED] stated that payroll records are unavailable because the beneficiary “volunteered for all of his services.” Mr. [REDACTED] estimated that the beneficiary devoted 28 hours per month to “Friday Sermons and Classes,” 18 hours per month to “Sunday Islamic History/Religion Classes,” 32 hours per month to “Counseling” and 15 hours per month on other activities such as “community outreach functions” and “special services during the Muslim month of fasting (Ramadan).” These totals add up to 93 hours per month. Multiplying this figure by twelve, the beneficiary worked about 1,116 hours per year; dividing that annual figure by 52 shows that the beneficiary worked about 21.5 hours per week. Thus, Mr. [REDACTED]’s March 1999 letter indicates that the beneficiary was a part-time volunteer prior to the filing of the petition.

On June 25, 2007, the director issued a notice of intent to revoke. The director observed: “the USCIS has interpreted the two-year experience provision to require paid and full-time work. Full-time is defined as thirty-five to forty hours per week.” The director noted that the petitioner’s prior submissions indicated that the beneficiary worked part-time as a volunteer. The director also questioned whether the beneficiary served as an imam prior to the filing date, rather than as a religious instructor who only occasionally performed additional duties as an imam.

In response, [REDACTED], now President of the petitioning entity, stated that the beneficiary’s past and present duties are consistent with those of an imam. Mr. [REDACTED] also claimed that, at the time the petition was filed and approved, there was not yet a requirement that the beneficiary’s qualifying experience must have been paid and full-time. To support this latter assertion, Mr. [REDACTED] identified two unpublished AAO decisions from 1993. Mr. [REDACTED] also cited *Camphill Soltane v. US Department of Justice, Immigration & Naturalization Service*, 381 F.3d 143 (3d Cir. 2004), stating: “the necessity of payment of a salary has been struck down as an impermissible interpretation and contrary to the plain language of the governing regulations.”

The director revoked the approval of the petition on August 10, 2007. The director stated that the beneficiary himself claimed to have been a “Religious Instructor” since 1994. The director also rejected the petitioner’s claim that the beneficiary’s unpaid, part-time volunteer work prior to the filing date constituted qualifying experience. The director noted that the AAO decisions cited by the petitioner are unpublished. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. We will address the *Camphill Soltane* decision in the context of the appeal.

On appeal, counsel does not contest the finding that the beneficiary was a part-time volunteer throughout the two-year qualifying period. Counsel asserted “the Director cited no legal or other authority” to support its position that qualifying experience must be full-time and compensated experience. Counsel also relies on the *Camphill Soltane* decision, specifically the following passage:

The requirement that the position be “salaried” appears to be inconsistent with the list of religious occupations given in the regulation itself, which includes positions—perhaps most

notably “missionaries”-who do not always receive salaries. We further note that in promulgating the final rules at issue, the agency explicitly stated that they had been “revised to account more clearly for *uncompensated* volunteers, whose services are engaged but who are not technically employees.” 56 Fed. Reg. 66965 (Dec. 27, 1991) (emphasis added).

Id. at 150. According to the record of proceeding, the beneficiary’s intended place of work is in Wisconsin, which is not under the jurisdiction of the Third Circuit. *Camphill Soltane* was never a binding precedent for this case.

Counsel acknowledges that the present matter is not under the Third Circuit’s jurisdiction, but then claims that the lack of jurisdiction is immaterial: “Neither the AAO, nor the Director, has more authority than an opinion of the Court of Appeals, even one voiced by a circuit outside the one in which this case arises.” Counsel, here, attempts to blur the distinction between authority (how much power an entity has) and jurisdiction (where that power applies).

We also note that *Camphill Soltane* involved an alien who received room, board, and a stipend; she received no “salary” as such, but she was not an uncompensated volunteer. Even then, the court made no definitive finding that unpaid volunteer experience is qualifying experience. Rather, the court’s use of the terms “questionable” and “appears to be” indicate an ambiguity that could be resolved with, in the court’s words, “further evidence or explanation.”

Additionally, the conclusion of the *Camphill Soltane* court is subject to dispute because of a technical error in the decision. In support of its reasoning, the court cited to the supplemental language in the promulgating rule at 8 C.F.R. § 214.2(r)(3)(ii)(D) that applies to an unrelated class of aliens: R-1 nonimmigrant religious workers. *Camphill Soltane* at 150 (citing 56 Fed. Reg. 66965, 66966 (Dec. 27, 1991)). The final rule for special immigrant religious workers was promulgated separately, at 56 Fed. Reg. 60897 (Nov. 29, 1991).

Because the immigrant and nonimmigrant religious worker classifications have distinctly different eligibility requirements, the technical error directly undermines the *Camphill Soltane* conclusion. Contrary to the special immigrant classification under review here, the R-1 nonimmigrant religious worker classification does not require any previous experience, whether compensated or not. For nonimmigrants, the regulation at 8 C.F.R. § 214.2(r)(3)(ii)(D) requires petitioners to specify “[t]he arrangements made, *if any*, for remuneration for services to be rendered by the alien” (emphasis added). This “if any” clause was inserted “to account more clearly for uncompensated volunteers,” as reported in the Federal Register. With regard to the immigrant classification, the parallel regulation at 8 C.F.R. § 204.5(m)(4) contains no comparable “if any” clause, and therefore no language “revised to account more clearly for uncompensated volunteers.” There is nothing in the implementing regulations for special immigrant religious workers to indicate that “uncompensated volunteers” can qualify for that classification.

It is unclear why the court cited to language from an unrelated nonimmigrant regulation rather than one that applied to the special immigrant religious worker petition under review. In any event, while the court found that the AAO “failed to show why the position offered by Camphill . . . does not qualify,” it also determined that it “need not set forth here a definitive test regarding when a job may or may not be characterized as a

‘religious occupation.’” Instead, the court vacated and remanded the case to allow the AAO to develop its position (as well as its position on three other determinations) because the court could not “sustain the decision of the AAO on this ground without further evidence or explanation.”

Part-time, uncompensated work is not qualifying experience for classification as a special immigrant minister. *See Matter of Varughese*, 17 I&N Dec. 399, 402 (BIA 1980). 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). If an individual receives no compensation for religious work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712, 713-14 (Reg. Commr. 1963) and *Matter of Sinha*, 10 I&N Dec. 758, 760 (Reg. Commr. 1964). If the petitioner did not support the beneficiary during part or all of the two-year qualifying period, the burden is on the petitioner to demonstrate that the beneficiary did not have to rely on outside employment to support himself during that time. All of the case law cited above predates, by several years, the filing of the instant petition.

Although counsel urges the AAO to disregard the jurisdictional limitations of the Third Circuit's *Camphill Soltane* decision, USCIS is not required to accept an adverse determination by one circuit court of appeals as if it were binding throughout the United States. *Georgia Dep't of Med. Assistance v. Bowen*, 846 F.2d 708, 710 (11th Cir.1988); *see also Matter of Cerna*, 20 I&N Dec. 399, 401 (BIA 1991) (declining to follow authority from one circuit when case arises in another circuit). Instead, like the Board of Immigration Appeals, the AAO is obligated to acquiesce to the holdings of a circuit court in cases arising within the jurisdiction of that circuit. *Matter of Anselmo*, 20 I&N Dec. 25, 31 (BIA 1989); *Matter of K-S-*, 20 I&N Dec. 715, 719 (BIA 1993).

Because this petition was adjudicated by the USCIS California Service Center, the AAO must apply the law of the U.S. Ninth Circuit Court of Appeals. In a decision addressing the same question, the Ninth Circuit concluded in 2007 that USCIS may reasonably require a church to prove that its minister had worked full time as a minister during the two years immediately preceding the petition for a special immigrant religious worker visa. *Hawaii Saeronam Presbyterian Church v. Ziglar*, 2007 WL 1747133 (9th Cir., June 14, 2007). Examining the applicable precedent decision, *Matter of Faith Assembly Church*, 19 I&N Dec. at 391, the court noted that the statute and regulations neither expressly require religious workers to carry on their vocations full time during the two years preceding their petitions nor expressly foreclose such a reading. Accordingly, the Ninth Circuit concluded that it was reasonable for the AAO to follow the precedent decision, *Matter of Faith Assembly Church*, and require a showing of full-time employment.

Whether the beneficiary is a minister (as appears to be the case) or a worker in a religious occupation, his admittedly unpaid, part-time experience during the 1996-1998 qualifying period is not qualifying continuous experience. The record is silent regarding the beneficiary's means of material support during that two-year period, but there is no basis to conclude that the beneficiary supported himself by performing qualifying religious work during that time, and certainly we are under no obligation to presume as much without proof. The AAO affirms the director's finding that the beneficiary was not continuously engaged as an imam throughout the statutory two-year period immediately preceding the filing of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.