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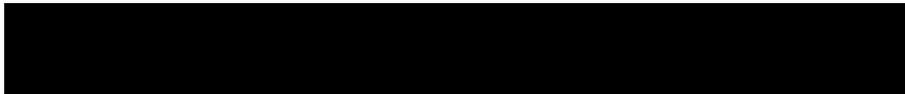
Office: CALIFORNIA SERVICE CENTER

Date: OCT 23 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.

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 on appeal. The appeal will be dismissed.

The petitioner is an Islamic center. 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.

On appeal, the petitioner submits arguments from counsel. The petitioner subsequently submits tax and financial documents.

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 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 May 17, 2006. 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.

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 May 17, 2006. 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 a letter accompanying the initial filing of the petition, President of the petitioning association, described the beneficiary’s past employment arrangements:

From December 1988 until November, 2005 [the beneficiary] worked as Recitation Master at Al-Arqam Ibn Abi Al-Arqam Institute for Quran Reading and Sciences, [w]hich is under supervision of Al-Azhar University [in Cairo, Egypt].

While associated with Al-Arqam Ibn [Abi] Al-Arqam Institute, [the beneficiary] has come to the United States on [s]everal occasions as [an] R-1 religious worker to perform temporary services at the [petitioning association]. On every occasion, he immediately began the performance of his religious work, and immediately returned to his duties at Al-Arqam Ibn [Abi] Al-Arqam Institute upon his return to Egypt.

An unsigned job offer letter from the petitioner to the beneficiary reads, in part:

I am very pleased to offer you a full-time position as the Sheik to lead the Quran Program at [the petitioning association]. . . .

Duties: Your Primary functions are the following:

- Start a Quran Program to teach young adolescents.
- Start a Teach-the-Trainer program to teach community members to teach Quran with Proper Pronunciation to other community members.
- Prepare a curriculum and schedule of classes.
- L[e]ad prayers at one of the [petitioner’s] facilities in coordination with other Imams.
- Provide Quran Knowledge and guidance to the community through Halaqas (Study Circles).

[REDACTED] stated that the beneficiary “is to be paid a gross monthly salary of \$3,000 per month plus health and other benefits.” A copy of an IRS Form W-2 Wage and Tax Statement indicating that “M C A Mosque Fund” paid the beneficiary \$3,500 in 2005. This amount is just over one month’s pay at the proffered rate.

The petitioner’s 2005-2006 Annual Report contains no clear reference to the beneficiary, although the report indicated that one of the petitioner’s “three main goals for the coming year” was to “[h]ire a resident scholar.”

The report indicated that the budget for "Payroll & Taxes" was to increase from \$14,738 per month for 2005 to \$18,000 per month for 2006 to account for "2 additional Employees," who were not identified.

On August 3, 2006, the director issued a request for evidence (RFE), instructing the petitioner to submit "evidence of the beneficiary's work history beginning May 17, 2004 and ending May 17, 2006," including "evidence . . . that shows monetary payment, such as W-2 forms, pay stubs, or other items showing the beneficiary received payment." The director also requested "evidence to show how the beneficiary supported himself . . . and any other activity with which the beneficiary was involved that would show financial support."

In response, [REDACTED] stated:

[The beneficiary] has been working at the [petitioner's] facilities as [a] full time Imam (Prayer Leader) during the following periods of time:

- October 4th, 2004 thru November 16th, 2004
- May 19th, 2005 thru July 31st, 2005
- October 3rd, 2005-Present

[REDACTED] did not mention remuneration or any outside source of financial support.

The petitioner submitted a copy of an IRS Form 1099-MISC Miscellaneous Income statement showing that the petitioner paid the beneficiary \$8,700 in "Nonemployee compensation" in 2004. The petitioner also submitted another copy of the previously submitted IRS Form W-2 showing that the petitioner's "Mosque Fund" paid the beneficiary \$3,500 in 2005. Monthly pay receipts from the first nine months of 2006 show payments of \$3,000 per month, except in March 2006 (the month of the beneficiary's last claimed absence from the United States) when the gross pay was only \$2,250.

The petitioner submitted a copy of a check, dated November 2, 2005, stating that the petitioner paid the beneficiary \$7,745.00 for "Ramadan Services." This check, by itself, is more than double the wages reported on the 2005 Form W-2. The petitioner did not explain why the Form W-2 did not reflect this payment, even though the payment was evidently presented to the beneficiary by his employer for services rendered.

A translated certificate from the Rehab Al-Quran Society, Cairo, Egypt, indicated that the beneficiary "worked as Recitation Master at Al-Arqam Ibn Abi Al-Arqam Institute for Quran reading and Sciences as a full-time [sic]" from May 17, 2004 to October 1, 2004; from November 20, 2004 to May 15, 2005; and from August 3, 2005 to September 30, 2005. These dates match the breaks in the beneficiary's reported employment at the petitioning institution. The certificate contained no further details about the beneficiary's work at the institute, and did not address the beneficiary's compensation.

The petitioner has repeatedly stated that the beneficiary's last entry into the United States was on March 9, 2006, which was during his most recent period of claimed employment with the petitioner. The record does not show how long the beneficiary was outside the United States immediately prior to this latest entry, where

he was, or what he was doing. The aforementioned certificate from the Rehab Al-Quran Society mentions no activity by the beneficiary during 2006.

The director denied the petition on February 13, 2007, stating: "the evidence is insufficient to establish that the beneficiary has been working continuously in the same type of work as the proffered position for the two-year period immediately preceding the filing of the petition." The director listed the various job descriptions and dates of employment and stated: "Based on the aforementioned letters, it must be concluded that the evidence is insufficient to establish that the beneficiary has been working continuously in the same type of work as the proffered position for the two-year period immediately preceding the filing of the petition."

On appeal, counsel asserts that the petitioner has "clearly chronicled" that "the beneficiary was employed by these two institutions continuously, without interruption" except for the inconsequential travel time between California and Egypt. Counsel adds that the beneficiary performed essentially the same duties at both locations.

Because the paychecks submitted by the petitioner did not match the information on the tax returns reproduced in the record, on May 8, 2008, the AAO issued a notice to the petitioner, which read, in part:

In conducting its appellate review of the record of proceeding, the AAO has determined that additional information and evidence is necessary. At various points in this proceeding, ██████████ stated that the beneficiary's future salary will be \$3,000 per month. He did not specify the beneficiary's *past* salary. Your organization claims to have employed the beneficiary since 2004. Please specify the terms of employment and compensation that have been in effect since the beneficiary began working for you. If those terms have changed, please specify when those terms changed, and specify what those terms were both before and after that change; do not limit your response to what those terms are at present. Also, please submit contemporaneous documentary evidence to show that you have been meeting the terms of compensation that were in effect at any given time. Your organization submitted a detailed "Annual Report" for 2005-2006. Accordingly, it appears that your organization maintains detailed financial records. . . .

The AAO has also encountered materials in the record that raise questions of credibility. The AAO intends to dismiss your appeal if you are not able to provide verifiable documentary evidence to resolve these issues. . . . [Y]ou submitted a copy of an IRS Form W-2 indicating that you paid the beneficiary \$3,500 in 2005. When, on August 3, 2006, the director requested more evidence of the beneficiary's compensation, you submitted another copy of this same Form W-2. You also submitted a photocopy of a check, dated November 2, 2005, payable to the beneficiary in the amount of \$7,745. This check is for an amount more than double the amount shown on the 2005 Form W-2. The check indicates that you paid the beneficiary for "Ramadan services," indicating that the payment was for services rendered rather than for some other purpose. Please explain why the Form W-2 failed to reflect this \$7,745 payment. Please provide a complete and thorough accounting of all payments that your organization made to the

beneficiary in 2004, 2005 and 2006, along with documentary evidence to support that accounting.

The AAO obtained (with the beneficiary's consent) transcripts of the beneficiary's 2005 and 2006 tax documents from the IRS. The IRS materials confirm that the petitioner reported paying \$8,700 to the beneficiary in 2004, and indicate that the beneficiary did not file any tax return for 2004. The IRS transcript shows that the petitioner and the beneficiary both reported that the petitioner paid the beneficiary only \$3,500 in 2005. For 2006, the IRS transcript shows that the beneficiary reported \$40,250 in wages, all from the petitioning entity.

██████████ Treasurer of the petitioner's Executive Committee, stated: "The W-2 for 2005 did not include payment to the beneficiary in the amount of \$7,475.00 due to clerical error. Internal audit indicated error and the [petitioner] amended beneficiary's W-2 for 2005 to reflect correct compensation." The petitioner submitted copies of transmittal forms showing that the petitioner had amended the beneficiary's Forms W-2, changing the 2005 total from \$3,500.00 to \$12,427.07 and the 2006 total from \$40,250.00 to \$43,311.34. The petitioner also issued a new IRS Form 1099-MISC showing \$1,000 in "Nonemployee compensation" in 2005. The amended documents were prepared in early June, 2008, after the AAO had notified the petitioner of the discrepancies in the petitioner's financial documents. Also in early June 2008, the beneficiary prepared new amended 2005 and 2006 tax returns to reflect the newly-claimed amounts. The documents indicate that the newly-claimed \$1,000 in "Nonemployee compensation" was for "consulting" that the beneficiary performed for the petitioner.

The petitioner submitted a document which ██████████ calls a "spread sheet listing all payments made by the [petitioner] to [the beneficiary] for the years 2004, 2005, and 2006." The only evidence cited to verify the accuracy of this spreadsheet consists of the amended IRS Forms W-2 and 1099-MISC. Forms amended in response to the AAO's notice do not constitute contemporaneous evidence of payments to the beneficiary. Even so, the totals shown on the spreadsheet do not, in fact, match the totals shown on the amended IRS forms. The spreadsheet indicates \$11,251.91 paid to the beneficiary in 2005, including a \$1,000.00 "Monthly Accomodation [*sic*]." While the \$1,000.00 payment corresponds to the Form 1099-MISC, the remaining sum of \$10,251.91 does not match either the original Form W-2 (which showed \$3,500.00) or the amended version (which showed \$12,427.07). For 2006, the spreadsheet shows an annual total of \$32,993.24, which differs significantly from both versions of that year's Form W-2 (originally \$40,250.00, amended to \$43,311.34).

The AAO instructed the petitioner to submit "documentary evidence" of its payments to the beneficiary, but the only documentation provided consisted of newly-created "amended" forms, such that the petitioner's new claims effectively pre-date the documentation meant to corroborate those claims. Like a delayed birth certificate, the amended tax documents (prepared, apparently, for the AAO's benefit) raise serious questions regarding the truth of the facts asserted. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991) (discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings). The discrepancies between the tax documents and the spreadsheet undermine the petitioner's most recent attempt to establish the beneficiary's compensation during the qualifying period. Because the documents contradict one another, they cannot all be accurate, true, or correct.

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 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).

The record indicates that the petitioner has employed the beneficiary in some capacity, but the petitioner's apparent inability to provide consistent records of that employment (despite purportedly meticulous record keeping as shown in the annual report) raises questions as to the true extent and nature of that employment. Based on the conflicting information on the spreadsheets, IRS Forms W-2 and 1099-MISC, and other materials submitted to document the beneficiary's purported duties and compensation, the petitioner has failed to establish credibly that the beneficiary worked for the petitioner in the capacity or to the extent claimed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The credibility issues in this proceeding preclude a finding that the petitioner has met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.