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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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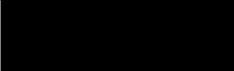


U.S. Citizenship
and Immigration
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **APR 09 2010**

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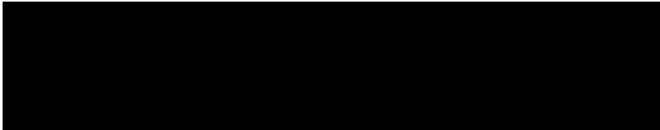
Petitioner:

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.

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is described as “a place of worship as well as a forum for the free interchange of ideas and viewpoints . . . to foster a better understanding and tolerance amongst the world’s religions,” as well as “an Islamic education organization, following the Sunni tradition.” 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/religious director. The director determined that the petitioner had not established: (1) that the beneficiary had the requisite two years of continuous, qualifying work experience immediately preceding the filing date of the petition; (2) that the beneficiary qualifies for the position offered; (3) the petitioner’s ability to compensate the beneficiary; or (4) the petitioner’s status as a qualifying religious organization.

In this decision, the term “prior counsel” shall refer to [REDACTED] who represented the petitioner at the time the petitioner filed the petition. The term “counsel” shall refer to the present attorney of record.

On appeal, the petitioner submits a brief from counsel and various exhibits.

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 September 30, 2012, 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 September 30, 2012, 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).

TWO YEARS EXPERIENCE

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary has been working as a minister or in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously for at least the two-year period immediately preceding the filing of the petition. The petitioner filed the Form I-360 petition on March 24, 2009. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work throughout the two years immediately prior to that date.

The USCIS regulation at 8 C.F.R. § 204.5(m)(11) reads:

Evidence relating to the alien's prior employment. Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work, must have occurred after the age of 14, and if acquired in the United States, must have been authorized under United States immigration law. If the alien was employed in the United States during the two years immediately preceding the filing of the application and:

- (i) Received salaried compensation, the petitioner must submit IRS documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of income tax returns.
- (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.
- (iii) Received no salary but provided for his or her own support, and provided support for any dependents, the petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS.

If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

Copies of Internal Revenue Service (IRS) Form W-2 Wage and Tax Statements show that the petitioner paid the beneficiary \$11,000 in 2007 and \$12,000, plus a \$24,000 "Housing Allow[ance]," in 2008.

At the time the petitioner filed the petition, prior counsel stated that the beneficiary “has been employed by the petitioner in valid E-3D status for over two years . . . since January 1, 2007.” According to 22 C.F.R. § 41.12, an E-3D nonimmigrant is the spouse or child of an Australian treaty alien coming to the United States solely to perform services in a specialty occupation under section 101(a)(15)(E)(iii) of the Act. E-3D status does not automatically confer employment authorization, but some E-3D nonimmigrants are eligible to apply for such authorization.

The petitioner’s initial submission included a photocopy of the beneficiary’s Form I-766 Employment Authorization Document (EAD), valid from October 14, 2008 to July 16, 2010, but no information about the beneficiary’s prior employment authorization during the first 19 months of the 2007-2009 qualifying period.

On August 29, 2009, the director issued a request for evidence (RFE), instructing the petitioner to submit documentation of the beneficiary’s employment during the two-year qualifying period, including “copies of the beneficiary’s IRS Forms W-2 . . . for 2007 and 2008.” The director did not acknowledge the petitioner’s prior submission of copies of those forms. The director also stated: “If the experience was gained in the United States provide evidence that the beneficiary was authorized to accept employment.”

In response to the RFE, the petitioner submitted a new copy of the beneficiary’s 2008 IRS Form W-2, consistent with the information on the form submitted earlier, as well as another copy of the beneficiary’s EAD issued in 2008.

The director denied the petition on December 1, 2009, in part because “the petitioner has not established that the beneficiary has been working continuously since at least from March 23, 2007 in lawful immigration status.”

On appeal, the petitioner submits copies of two Form I-797 Notices of Action, each notifying the beneficiary of the approval of a Form I-765 Application for Employment Authorization. The first notice, reporting the approval of Form I-765 with receipt number WAC 06 249 55417, stated that the beneficiary’s EAD would be “[v]alid from 09/19/2006 to 08/06/2008.” The second notice, relating to Form I-765 with receipt number WAC 08 222 51975, indicated that the beneficiary’s EAD would be “[v]alid from 10/14/2008 to 07/16/2010.”

Counsel states that the approval notices show “that the beneficiary was in fact lawfully employed with permission during the requisite two-year period preceding the filing of the petition.” The documents, however, do not show that the beneficiary continuously engaged in lawful employment throughout that period. The first EAD expired about ten weeks before the second EAD took effect. The second Form I-765 has a receipt date of August 12, 2008, meaning that the first EAD had already expired before the beneficiary even applied for the second one. The petitioner did not acknowledge or address this significant lapse in the beneficiary’s employment authorization.

The record shows that the beneficiary was in the United States throughout this ten-week gap in his employment authorization; his most recent documented entry before the filing date was on July 30, 2008. The petitioner has submitted no documentation to show that the beneficiary was authorized to work for the petitioner between August 7 and October 13, 2008.

For the reasons discussed above, we agree with the director's finding that the petitioner has not shown that the beneficiary engaged in two years of continuous, lawfully authorized employment immediately prior to the petition's filing date.

We note that the director based the denial, in part, on the observation that the beneficiary worked for the petitioner not as an R-1 nonimmigrant religious worker, but as an E-3D nonimmigrant spouse of an E-3 Australian treaty nonimmigrant. This is not inherently disqualifying, because while E-3D nonimmigrant status does not automatically convey employment authorization, an alien in that status is eligible to apply for employment authorization (as the beneficiary clearly did in this instance). Our finding rests not on the beneficiary's E-3D status, but on the documented lapse in his employment authorization during the second half of 2008.

THE BENEFICIARY'S QUALIFICATIONS

The next issue concerns the nature of the position the petitioner has offered to the beneficiary.

The USCIS regulation at 8 C.F.R. § 204.5(m)(5) defines a minister as an individual who:

- (A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct such religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
- (B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
- (C) Performs activities with a rational relationship to the religious calling of the minister; and
- (D) Works solely as a minister in the United States, which may include administrative duties incidental to the duties of a minister.

The USCIS regulation at 8 C.F.R. § 204.5(m)(9) requires that, if the alien is a minister, the petitioner must submit the following:

- (i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and

(ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological institution is accredited by the denomination, or

(iii) For denominations that do not require a prescribed theological education, evidence of:

- (A) The denomination's requirements for ordination to minister;
- (B) The duties allowed to be performed by virtue of ordination;
- (C) The denomination's levels of ordination, if any; and
- (D) The alien's completion of the denomination's requirements for ordination.

The petitioner's attestation on Part 8 of the Form I-360 petition included these excerpts:

Detailed description of the alien's proposed daily duties.

[The beneficiary's] principal responsibilities are to cater [to] the spiritual welfare of the community by providing the following services: lead the congregational prayers and give religious sermons, officiate at weddings and funerals, coordinate and supervise all community and interfaith programs at the Institute, provide a wide variety of counseling services to the community based on Quranic principles, such as marriage counseling, grief counseling, spiritual counseling, etc., and provide religious instruction to adults and children.

Description of the alien's qualifications for the position offered.

[The beneficiary] is fully qualified for this position due to his credentials, training, and extensive experience. Specifically, he has completed the Diploma in Hifz (complete memorization of the Quran) and Imamat (theological training), trained as a teacher in South Africa, and completed post-graduate studies in Australia. In addition, he has served as an Imam for over 20 years.

Similar assertions appear in a letter from [REDACTED] of the petitioning entity.

The petitioner's initial submission included a copy of a November 25, 1979 certificate from [REDACTED] indicating that the beneficiary "successfully completed the HIFZ and IMAAMAT

COURSE” (capitalization in original). A November 2000 certificate from the Islamic Center of South Bay-LA indicates that the beneficiary “has successfully completed a course in Islamic Shari’ah which is equivalent to 3 (three) credit hours at a university level.”

In the RFE, the director instructed the petitioner to “[p]rovide a detailed explanation of the requirements for becoming an Imam,” and evidence that the petitioner has met those requirements. In response, [REDACTED] stated:

Islam does not have any ordination, vows or Imam Hood per se. Generally Imams qualify on the basis of their Islamic knowledge and knowledge of duties related to the congregation. [The beneficiary] has completed memorization of the entire Qur’an, as well as training as a recitor. He has completed an Imam course that fulfills this requirement. [The beneficiary] also studied individually under various Sheikhs/Spiritual leaders regarding Islamic jurisprudence and has been involved in courses and activities with various organizations in Los Angeles.

The petitioner submitted copies of previously submitted documents, as well as copies of letters attesting to the beneficiary’s earlier employment. In an August 30, 1989 letter, [REDACTED] president of Pretoria Muslim Trust Management Committee, stated:

[The beneficiary] has served our community as [REDACTED] from 1980-1989. . . .

He has performed all duties as Imam such as:

1. Marriage ceremonies
2. Burials – funeral rites
3. Counselling – marriage and family
4. Performance of Taraweeh prayer during Ramadaan
5. Performance of Friday prayer and Khutbah
6. Hifz classes
7. Adult classes – Quraan and Tajweed

In a December 1, 1999 letter, [REDACTED] stated:

[T]he above institution has employed [the beneficiary,] a qualified Qari, Imam and teacher since 1 January 1993 to November 1999. He graduated under the distinguished patronage of [REDACTED] .

As a qualified teacher he has successfully structured a curriculum to meet the educational needs of the madressah. As a Muslim leader he has served the community in solemnizing marriages, delivering the Friday prayers, counselling and burials.

[REDACTED] of the Islamic Center of the South Bay-LA, stated that the beneficiary “served as the Imam (religious leader) . . . from July 2001 to May 2004,” during which time the beneficiary “lead [*sic*] the prayers, conducted the weekend school, classes for adults . . . [and] also performed marriages and provided funeral services and other religious cultural rites.”

[REDACTED] stated on April 28, 2006 that the beneficiary “has been working as an Imam at the above-mentioned institution since 1 September 2004,” and that the beneficiary’s duties “included leading prayers, delivering sermons, counselling services, burial rites and performance of marriages.”

In denying the petition, the director stated that the beneficiary’s educational credentials “do[] not constitute proof that an alien is entitled to perform duties of an Imam.” The director also stated:

In addition, according to the public record listed on the website as “It is difficult to describe the methods to become an Imam. The term Imam means several different things to the different Islamic sects. So, for example, anyone who leads prayers at a prayer service is temporary [*sic*] an Imam. To become an Imam in this sense one may merely need to be an adult male.” Another website indicates that “there are some people whom Sunnis call ‘Imams’ who are not prayer leaders.” Therefore, the “diploma” alone without submitted further evidence is insufficient to establish that the beneficiary qualified as [an] Imam and the proffered position is qualifies [*sic*] as vocation for the religious organization.

The petitioner has not established that the beneficiary’s activities for the petitioner would require any religious training or qualifications. The record does not provide information as to what training and/or educational requirements would be considered for a qualified religious worker in this position. The petitioner has not shown that the beneficiary is performing duties above and beyond those of a caring member of the denomination. Consequently, it is not been demonstrated that the beneficiary is qualified to engage in a religious vocation or occupation.

On appeal, the petitioner submits various educational documents, some previously reproduced in the record, and a letter from [REDACTED] who states:

The term “Imam” in Islam, has two meanings – a general, literal one and a specific contextual one.

In regards to the general literal meaning of the term Imam, it means any adult male who may lead congregational prayer at any place. The only requirement for fulfilling this position is that the person must be most proficient in reciting the Holy Quraan the best among the group. . . .

The specific and contextual meaning of the word Imam encompasses the knowledge, expertise and training of an individual in the fundamentals of Islamic Jurisprudence and Law. . . .

This training prepares prospective Imams to take leadership positions in Islamic institutions by given them expertise in the dynamics of an Islamic community, the ability to relate to current issues and respond to diversity and lead the community to higher moral and ethical conduct. [The beneficiary] has a clear and established record of providing these special services for his community. . . .

In addition to meeting the criteria defined above for both the general and specific contextual requirements, it is our opinion that [the beneficiary] is specially trained to be an Imam.

We find that the petitioner has adequately shown that the beneficiary qualifies as an imam. The requirements for the position are admittedly rather loosely defined, but this merely makes it easier to meet those qualifications. Supplemental information published with the recently revised regulations pertaining to special immigrant religious workers indicates that “USCIS did not intend the definition of ‘minister’ to require a uniform type of training that all denominations would have to provide their ministers. . . . [S]ome denominations do not require a particular level of formal academic training or experience.” 73 Fed. Reg. 72276, 72280 (November 26, 2008). The director did not explain how the petitioner’s evidence was insufficient in this regard.

If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered. 8 C.F.R. § 103.2(b)(16)(i). Here, the director relied on information from two unidentified web sites. The director did not establish the authority of the sites, include printouts from the sites in the record, or advise the petitioner, prior to the decision, of the director’s intent to deny the petition based on information from the sites. We will, therefore, disregard the passages that the director quoted from two unnamed web sites. The unattributed quotations have no value as evidence in this proceeding.

We find that the petitioner has adequately established that the beneficiary is qualified for the position of imam, and we withdraw the director’s contrary finding.

INTENDED COMPENSATION

The next issue concerns the petitioner’s intended compensation of the beneficiary. The USCIS regulation at 8 C.F.R. § 204.5(m)(10) states, in full:

Evidence relating to compensation. Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include

salaries or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

In the initial filing, the petitioner attested that the beneficiary would receive a “[b]ase salary of \$1,000 a month, plus monthly allowance of \$2,000 for housing and medical expenses.” These amounts are consistent with the information on the beneficiary’s IRS Form W-2 for 2008, described earlier in this decision.

In the RFE, the director requested “evidence of how the petitioner intends to compensate the alien,” including IRS documentation of past compensation, if available. As noted previously, the director did not acknowledge the director’s earlier submission of copies of IRS documentation of its compensation of the beneficiary in 2007 and 2008.

The petitioner submitted a copy of its “Profit & Loss Budget Overview” for calendar year 2009, showing that the petitioner anticipated net income of \$13,652 for the year after the beneficiary’s compensation and other expenses. A copy of the beneficiary’s pay receipt for August 2009 showed that the petitioner paid him his full salary and housing allowance that month. Year-to-date totals shown on that receipt are also consistent with full payment of the beneficiary’s salary and housing allowance. The petitioner submitted an additional copy of the beneficiary’s 2008 IRS Form W-2, with information matching the copy submitted previously.

In denying the petition, the director acknowledged the petitioner’s submission of the 2008 Form W-2, but found that the petitioner had not submitted sufficient evidence of its ability to compensate the beneficiary. The director faulted the petitioner for failing to submit certain documents, such as the petitioner’s tax returns, that the director had never previously requested in this proceeding.

On appeal, the petitioner submits additional IRS documentation, including a new Form W-2 showing that the petitioner paid the beneficiary \$16,000 in salary and \$26,000 in housing during 2009. The petitioner also submits a copy of its IRS Form 990 return for 2007 (the most recent year for which a return was available). This evidence, like the IRS documentation submitted previously, shows that the petitioner has paid the beneficiary increasing amounts since his employment began, and that the beneficiary’s compensation has been equal to or greater than the offered amount since 2008.

Based on the evidence submitted, we find that the petitioner is able to compensate the beneficiary at the level claimed, and we withdraw the director’s contrary finding.

RELIGIOUS ORGANIZATION

Toward the end of the December 2009 denial notice, the director stated: “The last issue to be discussed is whether the employer qualifies as a bona fide religious organization in the United States.” The director quoted the regulations at 8 C.F.R. § 204.5(m)(1) (which relate to the beneficiary’s past membership in a religious denomination) and 8 C.F.R. § 204.5(m)(2) (which pertain to the nature of the position the beneficiary seeks), and then concluded: “The petitioner has not submitted its bank statements, copies of annual reports, federal tax returns and audited financial statements to demonstrate the ability to pay the beneficiary’s proffered wage. Therefore, the evidence is insufficient to establish that the employer qualifies as a bona fide religious organization.”

The regulations and financial evidence mentioned by the director are relevant in other contexts, but do not relate to the petitioner’s status as a bona fide religious organization.

We note that the petitioner’s initial submission included a copy of an August 16, 2007 IRS advance ruling letter, indicating that the IRS recognizes the petitioner as a tax-exempt non-profit organization. The “Effective Date of Exemption” is September 28, 2006. The available evidence appears to satisfy the regulatory requirements at 8 C.F.R. § 204.5(m)(8) relating to the tax-exempt status of the intending employer. The director did not identify any deficiencies in this documentation.

We withdraw the director’s unexplained and unsupported finding that the petitioner has not established its status as a bona fide religious organization.

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 met that burden. While the petitioner has overcome many of the director’s stated grounds for denial, the petitioner has not overcome all of them. Failure to establish eligibility under any one of the regulatory requirements listed throughout 8 C.F.R. § 204.5(m) is, itself, sufficient grounds for denial of the petition. Accordingly, the AAO will dismiss the appeal.

ORDER: The appeal is dismissed.