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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

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**U.S. Citizenship  
and Immigration  
Services**

[REDACTED]

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DATE: **DEC 08 2011** Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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:

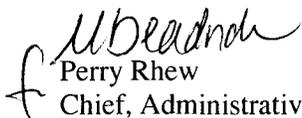
[REDACTED]

**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition and denied the petitioner's motion to reconsider as untimely filed. The petitioner also untimely appealed the director's denial of its motion; however, the director granted the untimely appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2) and again denied the petition. On appeal, the Administrative Appeals Office (AAO) remanded the matter for issuance of a new decision. The director again denied the petition and, following the AAO's instructions, certified the decision to the AAO for review. The AAO will affirm the director's decision.

The petitioner is an Islamic school. 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 a teacher. The director determined that the petitioner had not established that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the petition.

Counsel argues on certification that the director "ignored relevant evidence demonstrating that [ ] the first five months of the qualifying 2-year full-time employment as a religious teacher [was] done on an unpaid, volunteer basis, [and] that the beneficiary was supported by family sources of income and not by other employment." Counsel provides a letter-brief and additional documentation on certification.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
- (ii) seeks to enter the United States –
  - (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
  - (II) before 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).

The issue presented is whether the petitioner established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition. The petition was filed on January 19, 2007 and was not pending on the date new regulations were implemented on November 26, 2008. Accordingly, we will review the petition based on the regulation in effect at the time the petition was filed.

The regulation in effect at the time the petition was filed provided at 8 C.F.R. § 204.5(m)(1) that “[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker.” The regulation indicated that the “religious worker 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.”

The regulation at 8 C.F.R. § 204.5(m)(3) stated, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

As previously stated, the petition was filed on January 19, 2007. Therefore, the petitioner must establish that the beneficiary was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

In an October 30, 2006 letter, the petitioner, through the chairman of its education board, [REDACTED], stated that the beneficiary “was a volunteer teacher for our school . . . during the academic year of 2004-2005, as a full-time teacher working with elementary aged children.” He further stated that she later became a paid employee. The petitioner submitted a copy of a June 14, 2005 Form I-797, Notice of Action, approving the beneficiary for a change of status to R-1 nonimmigrant religious worker. The Form I-797 indicated that the petition was filed on November 18, 2004, and that the beneficiary was approved for R-1 status from June 14, 2005 to December 9, 2007. The petitioner submitted no other documentation with the petition to establish the beneficiary’s qualifying work history.

In a request for evidence (RFE) dated April 25, 2007, the director instructed the petitioner to:

Provide evidence of the beneficiary’s work history beginning 1-16-2005 and ending 1-16-2007 only. Provide experience letters written by the previous and

current employers that include a breakdown of duties performed in the religious occupation for an average week. Include the employer's name, specific dates of employment, specific job duties, number of hours worked per week, form and amount of compensation, and level of responsibility/supervision. **The experience letters must include a schedule that provides the time of day and detailed description of the exact duties performed for each hour of the work day throughout the entire week. The schedule must include the specific courses taught by the beneficiary over the specified period of time. Also, include the syllabi for the curriculum taught by the beneficiary.** In addition to experience letters provide documentary evidence that the beneficiary is performing all of the claimed duties. In addition, submit evidence that shows monetary payment, such as pay stubs or other items showing the beneficiary received payment. If any work was on a volunteer basis, provide evidence to show how the beneficiary supported herself during the two-year period or what other activity the beneficiary was involved in that would show support. [Emphasis in the original.]

In a June 6, 2007 letter submitted in response, the petitioner provided the following daily schedule for the beneficiary and stated that it had remained "essentially the same throughout the [qualifying] period."

7:30 a.m.	Students and teachers arrive at school and attend Assembly, which includes prayers and announcements. Then they proceed to class.
8:00a.m.	Teach Qur'an class . . .
9:00 a.m.	Teach Arabic language class . . .
10:00 a.m.	Snack break
10:20 a.m.	Teach Islamic Studies class . . .
10:50 a.m.	Preparation time (students at Physical Education)
12:00 p.m.	Lunch break
12:30 p.m.	planning period (students in other subjects), grading papers, and tutoring
2:00 p.m.	Lead prayers with students
2:30 p.m.	Teach students about the library and research in the school library . . .
3:30 p.m.	Work with students in after school program, assisting with homework and tutoring.
4:30 p.m.	End work.

The petitioner also submitted several documents written in Arabic that the beneficiary stated were "lesson planning for Islamic Studies, Qur'an and Arabic language during the years of 2005, 2006 and 2007." However, the petitioner provided only partial translations that do not provide any specific information regarding the beneficiary's work during the day. For example, one translation indicates that the document covers a period from January 10, 2005 to January 8, 2007. It has a heading of Holy Qu'ran with two bullets: "Listen to students reading *Ayah* (1-16) from *Souret Al-Haka*" and "Memorize *Ayah* (17-18)." A single bullet under Islamic Studies states "*Hadith* about the importance of Mosques and praying inside it."

The documents therefore do not comply with the terms of 8 C.F.R. § 103.2(b)(3), which provides:

*Translations.* Any document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Because the petitioner failed to submit complete certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. The petitioner also submitted copies of newsletters to parents purportedly from the beneficiary with dates beginning in September 2005.

The petitioner provided copies of the beneficiary's Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, for 2005 and 2006, indicating that it paid the beneficiary wages of \$6,400 and \$15,200, respectively. The petitioner submitted a letter from [REDACTED], who stated that he was the beneficiary's son-in-law and that he provided support to her and her husband from December 2003 to December 2004 in his apartment, and that after they moved, he "kept supporting them financially until my mother in law got a job." The petitioner did not provide any evidence of this support provided by the [REDACTED].

The director denied the petition, stating that the petitioner failed to establish that the beneficiary's prior work experience was in a full-time salaried position, and that the evidence was insufficient to establish that the beneficiary had been performing full-time work during the qualifying period. On motion, counsel alleged that the director "erred in discounting the Beneficiary's full-time volunteer teaching experience" from January 16, 2005 to June 13, 2005, stating that there "was no change in her continuous and primary work from unpaid to paid teaching." Citing an unpublished case, counsel noted that the AAO had stated that:

[I]n the rare case where volunteer work might constitute prior qualifying experience, the petitioner must establish that the beneficiary, while continuously and primarily engaged in the traditional religious occupation, was self-sufficient or that his or her financial well being was clearly maintained by means other than secular employment.

Counsel further stated:

Many religious occupations for which volunteer time would be offered are clearly part-time volunteer positions. Others have other evidentiary deficiencies. Here, none of these issues exist. The position is a full-time teaching position. The period in question is less than one-fourth of the total 2-year prior experience time. Pay

and income records of the Beneficiary corroborate no outside source of income. The physician son-in-law has both the financial means to deliver the support in question and the professional reputation to guard against false or misleading statements. Likewise, the leader and teachers of a religious school whose business is to give moral instruction to children, have a strong incentive to model truth in all their dealings. The lesson plans show like preparation for paid and unpaid work. Like pieces of a puzzle, these all fit together to show a consistent picture of full-time, primary and continuous experience for this six-month period in question.

On appeal, counsel alleged that the director committed legal error by denying the petition because of the five months of unpaid experience. The petitioner provided a June 2, 2010 declaration from the beneficiary's husband, who stated that the family had money from their savings, and was also supported by their son-in-law, including a \$5,000 check in August 2004. He further stated that in October 2004, he borrowed \$5,000 from his cousin and sold the family car for \$3,700 in June 2005, just before the beneficiary's R-1 petition was approved. The petitioner provided copies of the canceled checks from the beneficiary's son-in-law and from [REDACTED], and a copy of a June 2005 check for \$3,700 from [REDACTED] payable to the beneficiary's husband.

Although the [REDACTED] stated that he provided support for his in-laws after December 2004, the petitioner provided no documentation of any support from [REDACTED] received by the beneficiary during the qualifying period and no evidence of any savings used by the family for their support. Further, there is no evidence of the beneficiary's expenses that would support her husband's claim that they could survive on the income that the family received from relatives from August 2004 to June 2005. Counsel's argument that the beneficiary's financial documentation does not reveal any outside employment is not persuasive. Counsel's statement requires an assumption that any compensation that the beneficiary might have received would have been reported to taxing authorities.

On certification, counsel renews the argument that "independent financial support [is] an exception to the non-statutory paid experience rule," and that the AAO recognizes this exception. Nonetheless, even if we accept that the petitioner has established that the beneficiary received financial support unrelated to secular employment, the record does not sufficiently establish that the beneficiary worked full time in a qualifying religious occupation or vocation throughout the qualifying period.

As counsel acknowledges, compensation is one way for USCIS to evaluate whether or not the alien has met the qualifying two-year work experience. When the individual's financial support is provided by other than wages, the petitioner must provide more detailed information to establish that the alien has the required continuing work experience. As evidence in the instant case, the petitioner submitted copies of what the beneficiary states are lesson plans. However, as discussed above, these documents are not fully translated as required by the regulation at 8 C.F.R. § 103.2(b)(3), and the partial translations provided do not provide sufficient evidence of the beneficiary's work schedule. Counsel also argues that we should rely on the statements of the petitioner, the beneficiary, and the beneficiary's son-in-law because they are, by virtue of their

positions, more reliable and trustworthy. However, counsel provides no empirical evidence that people in any of these positions or professions are more reliable than the general public. Further, the regulation at 8 C.F.R. § 103.2(b)(2)(i) provides that the non-existence or unavailability of required evidence creates a presumption of ineligibility. According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits.

The petitioner has submitted insufficient documentation to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the petition.

The AAO will affirm the certified denial for the above stated reasons. 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 director's decision of June 17, 2011 is affirmed. The petition is denied.