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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



U.S. Citizenship
and Immigration
Services



C1

DATE: **JUN 10 2011** OFFICE: CALIFORNIA SERVICE CENTER FILE:

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:

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is a Shia Muslim religious and community 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 in a position variously identified as director of religious activities, imam, a'lim and maulana. The director determined that the petitioner had not established that the beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary.

On appeal, the petitioner submits a brief from counsel.

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 first issue under consideration concerns the beneficiary's past experience. At the time the petitioner filed the petition, the U.S. Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. §§ 204.5(m)(1) and (3)(ii)(A) required the petitioner to establish that the beneficiary was

continuously engaged in qualifying religious work throughout the two years immediately preceding the petition's filing date.

The petitioner filed the Form I-360 petition on July 19, 2004. The beneficiary spent most of the preceding two years in Botswana. [REDACTED] chairman of the [REDACTED], stated in a June 24, 2004 letter that the beneficiary "worked with our organization as a Director [of] Religious Activities from 05/1999 to 03/17/2004."

The beneficiary entered the United States on March 19, 2004 as a B-2 nonimmigrant visitor for pleasure, ostensibly for the purpose of visiting his brother. Under the USCIS regulation at 8 C.F.R. § 214.1(e), a B-2 nonimmigrant may not engage in any employment in the United States. Therefore, for the last four months of the 24-month qualifying period, the beneficiary was in the United States with no authorization to work for the petitioner or any other United States employer.

While the petition was pending, USCIS published new regulations for special immigrant religious worker petitions, as required under section 2(b)(1) of the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391, 122 Stat. 4193 (2008). Supplementary information published with the new rule specified: "All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule. If documentation is required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). Accordingly, the new regulations apply to this petition.

The 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 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 [Internal Revenue Service] 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.

On June 2, 2010, the director issued a request for evidence (RFE), instructing the petitioner to submit evidence of the beneficiary's compensated and (if in the United States) lawful employment experience during the two-year qualifying period. The director also required that "[i]f the alien was employed outside the United States during the two years, the petitioner must submit comparable documentary evidence of religious work." In response, the petitioner submitted a June 21, 2010 letter from [REDACTED] [REDACTED] stating that the beneficiary "served our community from May 1999 till March 2004 as a Religious Director." [REDACTED] did not say whether the beneficiary received any compensation for this work, and the petitioner submitted no documentary evidence of the beneficiary's compensation or support from that period.

In a March 15, 2004 letter to the beneficiary, [REDACTED] thanked the beneficiary for his "Religious service and guidance" and wished him well in his future endeavors. Once again, this letter does not mention compensation. It establishes only that the beneficiary's work for the mosque in Botswana ended on March 15, 2004.

Immigration documents from Botswana authorized the beneficiary to work for [REDACTED] [REDACTED] until May 13, 2005, but the documents say nothing about the terms of employment or compensation. Immigration documents issued before the work took place are not comparable to IRS documentation of compensation.

With respect to the beneficiary's claimed work in the United States, the petitioner stated:

[W]e have interpreted [the two-year experience requirement] as permitting a brief interlude of volunteer work in the same vocation and for the same denomination. During his visit to the United States in 2004, before we filed this I-360 petition for him in July of that year, the beneficiary did briefly work for us as a volunteer, at which time we did not compensate him monetarily as we do now.

The petitioner's interpretation of the regulations is not persuasive. The regulation at 8 C.F.R. § 204.5(m)(11) requires the petitioner to submit evidence of compensation in the form of IRS documentation, or evidence of qualifying self-support. Permissible circumstances for self-support, outlined in the USCIS regulations at 8 C.F.R. § 214.2(r)(11)(ii), involve the beneficiary's participation

in an established program for temporary, uncompensated missionary work. The petitioner has not shown or claimed that the beneficiary participated in such a program.

Furthermore, if the alien was self-supporting, then the regulation at 8 C.F.R. § 204.5(m)(11)(iii) requires the petitioner to show how the beneficiary supported himself by submitting audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS. The director quoted these regulatory requirements verbatim in the RFE. The petitioner cannot simply assert that the beneficiary was an unpaid volunteer, and leave it at that. Simply 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 (Reg. Commr. 1972))

the beneficiary's brother, stated that the beneficiary "has been residing at my home . . . since March 2004, along with his wife and children. . . . I have supported [the beneficiary] and his family since March 2004, and will continue to do so in the future." The beneficiary's residence with an immediate relative is not evidence of qualifying continuous experience as a religious worker, nor does it establish the beneficiary's participation in an established program for temporary, uncompensated missionary work. The regulations require specified evidence of compensation for religious work. Nothing in the regulations indicates that the petitioner can, in the alternative, simply assert that the beneficiary worked as an unpaid volunteer while living with a relative.

The director denied the petition on August 2, 2010, stating that "volunteer activities do not constitute qualifying work experience." On appeal, counsel claims that the director's "absurd interpretation [of the regulations] would seem to disqualify any beneficiary who has taken a vacation, sabbatical or other period of unpaid leave during the 2 years preceding the filing date of the petition," and that the director's position fails to account for the "brief period of travel" between the end of an alien's employment abroad and the beginning of the alien's employment in the United States.

Counsel states:

As the Service Center appears to have read the regulation, the Beneficiary satisfied the experience requirement on March 15, 2010, but then became less experienced and failed to satisfy the requirement on March 16, 2010, because of his departure from Botswana and the related fact that he could no longer work for the there. . . .

The Service Center's reading of the regulations appears to contemplate a very fragile sort of past experience, which bursts and vanishes like a soap bubble the moment that the experienced alien ceases to work in an active paid capacity for the employer with whom he or she gained the experience. . . .

The correct interpretation of 8 C.F.R. § 204.5(m)(4), in harmony with common sense, is that destruction of previously-earned experience only occurs as, in effect, a penalty for certain actions which defy U.S. law or indicate a complete disengagement from the religious work through which an alien gained relevant experience.

The regulatory language, like the statutory language from which it derives, does not merely require two years of experience. It requires two years of continuous experience immediately preceding the filing date. Experience outside the qualifying period is, by definition, not qualifying experience.

Counsel is entirely correct that the regulation at 8 C.F.R. § 204.5(m)(4) allows for breaks in the continuity of religious work. Nevertheless, that regulation places conditions on such breaks. The regulation at 8 C.F.R. § 204.5(m)(4)(i) requires that the alien was still employed as a religious worker. The beneficiary's work in Botswana ended on March 15, 2004. [REDACTED] letter bearing that date makes it clear that the beneficiary was not simply departing for a temporary vacation; the letter acknowledged the end of his association with the mosque. If his work in Botswana was ever employment, the beneficiary was not "still employed as a religious worker" after March 15, 2004.

The regulation at 8 C.F.R. § 204.5(m)(4)(iii) requires that the nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States. The petitioner has not shown either of these alternatives to apply in this instance. The limiting provisions of this regulation become meaningless if any and every interruption in employment qualifies as a "sabbatical."

Counsel makes the observation that the "still employed" clause "can hardly be read to require formal continuity of employment in the sense of continuous paid work for a particular employer." Nevertheless, an employee who takes a temporary sabbatical is "still employed" in the sense that the same job is waiting for the employee upon his or her return. In this instance, the beneficiary left his job in Botswana and then left Botswana altogether. Counsel fails to explain how the beneficiary was "still employed as a religious worker" at that time. Leaving one's job, and the country where that job was located, in hopes of eventually finding new employment, is not continuous employment, and it is not a sabbatical. It is indefinite unemployment. (If, on the other hand, the beneficiary traveled to the United States with the specific intent of working for the petitioner, then he entered as a B-2 nonimmigrant visitor for pleasure under false pretenses. *See* 8 C.F.R. § 214.1(e).)

Counsel asserts that the beneficiary's claimed volunteer work for the petitioner was a qualifying break, before which the beneficiary had already worked the full two years in Botswana. The petitioner, however, has not submitted evidence comparable to IRS documentation to establish this employment experience in Botswana, nor has the petitioner accounted for its absence. The petitioner has failed to comply with the director's request for this evidence. On this basis alone, USCIS cannot approve the petition. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The regulation at 8 C.F.R. § 103.2(b)(2)(i) states:

The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

The petitioner has not followed the above procedure. The petitioner has simply submitted a handful of uncorroborated letters regarding the beneficiary's claimed work in Botswana, and counsel has declared this claimed work to be "documented." 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. at 165.

Regarding the petitioner's claim that the beneficiary's volunteer work within the United States is qualifying experience, any work performed by the beneficiary as a volunteer is not qualifying. In the preamble to the proposed rule, USCIS recognized that although "legitimate religious work is sometimes performed on a voluntary basis . . . allowing such work to be the basis for . . . special immigrant religious worker classification opens the door to an unacceptable amount of fraud and increased risk to the integrity of the program." See 72 Fed. Reg. 20442, 20446 (April 25, 2007). The regulation at 8 C.F.R. § 204.5(m)(11) specifically requires that the alien's prior experience have been compensated either by salaried or non-salaried compensation (such as room and board), but can also include self-support under limited conditions. In elaborating on this issue in the final rule, USCIS determined that the sole instances where aliens may be uncompensated are those aliens "participating in an established, traditionally non-compensated, missionary program." See 73 Fed. Reg. at 72278. See also 8 C.F.R. § 214.2(r)(11)(ii). The petitioner has neither claimed nor established that the beneficiary was participating in such a program. Accordingly, any time the beneficiary may have spent in the United States "working" as a volunteer for the petitioner cannot be considered qualifying employment.

In addition, the regulation at 8 C.F.R. § 204.5(m)(4) prohibits USCIS from considering work that was not "in lawful immigration status" and any "unauthorized work in the United States." The regulation at 8 C.F.R. § 204.5(m)(11) requires that "qualifying prior experience . . . must have been authorized under United States immigration law." Therefore, the regulations, separately and together, require that USCIS must have affirmatively authorized the beneficiary to perform any claimed religious functions while in the United States; it cannot suffice to claim that an alien entered the United States for unrelated reasons (as a tourist, for instance) and ended up volunteering for a

religious organization. Such activity goes beyond the specific purpose for which the alien obtained a B-2 nonimmigrant visa and was admitted into the United States.

For the above reasons, the AAO agrees with the director that the petitioner did not establish that the beneficiary engaged in two years of continuous, lawful, authorized employment immediately preceding the filing date.

The second and final stated ground for denial concerns the credibility and validity of the job offer that the petitioner has extended to the beneficiary. In a letter accompanying the initial filing, [REDACTED] president of the petitioning organization, stated that the beneficiary would work 40 hours a week and receive "\$2000.00 per month plus living residence covering all utilities."

In May 2005, following the April 8, 2005 issuance of an RFE, the petitioner submitted financial documents including copies of IRS Form 990 returns for its 2002 and 2003 fiscal years. The petitioner indicated that it did not pay any salaries or other compensation during those years.

A USCIS officer visited the petitioning entity on April 25, 2008, and asked the petitioner "how many petitions the organization had filed over the years since their inception in 1982." The petitioner responded by listing six petitions.

Following the June 2, 2010 RFE, the petitioner submitted copies of later IRS Form 990 returns, reporting the following salary figures:

Fiscal year	Salaries paid
2004-2005	\$27,000
2005-2006	0
2006-2007	19,200
2007-2008	0
2008-2009	0

[REDACTED] stated that, as of July 2010, "the beneficiary is our only paid staff." Copies of processed checks from December 2009 onward show that the petitioner paid the beneficiary \$2,500 per month.

IRS printouts show that the beneficiary and his spouse jointly reported income of \$27,900 in 2006, \$26,193 in 2007 and \$25,644 in 2008. A printout from the Social Security Administration shows that the beneficiary earned \$24,713 in "self-employment" income in 2009. The petitioner claimed to have paid no salaries from July 1, 2005 to June 30, 2009 except for \$19,200 paid during the 2006-2007 fiscal year. Beyond the \$2,500 check the petitioner issued to the beneficiary in December 2009, the record does not establish the source(s) of the beneficiary's reported 2006-2009 income. The financial information on the petitioner's IRS Form 990 returns is not specific enough to show whether it reported payments to the beneficiary as an expense other than salaries.

In an employer attestation dated July 12, 2010, the petitioner provided the following information at Part 8 of the Form I-360:

Number of employees working at the same location where the beneficiary will be employed:	0
Number of aliens holding special immigrant or nonimmigrant religious worker status currently employed or employed within the past 5 years:	0
Number of Special Immigrant Religious Worker I-360 and Nonimmigrant Religious Worker I-129 Petitions submitted by the prospective employer within the past 5 years:	0

The AAO notes that the petitioner signed the Form I-360 attestation at page 8 on July 12, 2010 under penalty of perjury, certifying that “the contents of this attestation, and the evidence submitted, are true and correct.”

The USCIS regulation at 8 C.F.R. § 204.5(m)(12) states:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization’s facilities, an interview with the organization’s officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

As part of its efforts to verify the petitioner’s claims, USCIS reviewed its records for prior filings by the petitioner. The results contradict the petitioner’s claim to have filed no Form I-129 or I-360 religious worker petitions during the five years prior to July 12, 2010.

In the denial notice, the director stated that USCIS records revealed numerous prior filings by the petitioner. The director listed information for a representative sampling of five such petitions in the denial notice. These petitions are:

Form Number	Receipt Number	Filing Date	Outcome
I-360	[REDACTED]	10/02/2003	Denied 02/15/2005
I-360	[REDACTED]	11/29/2004	Denied 03/26/2009
I-129	[REDACTED]	05/12/2006	Denied 4/08/2010

I-140		08/02/2006	Approved 08/17/2006
I-140		01/10/2008	Approved 11/19/2008

The director indicated that the petitioner had filed several petitions beyond the five listed above.

On appeal, counsel notes the petitioner filed the first two listed petitions more than five years before the date of the employer attestation, and that the last two petitions are not religious worker petitions filed on Forms I-129 or I-360. Therefore, those four petitions lie outside of the instruction on the attestation to state the “Number of Special Immigrant Religious Worker I-360 and Nonimmigrant Religious Worker I-129 Petitions submitted by the prospective employer within the past 5 years.”

Counsel claims that the petitioner erroneously failed to mention the remaining Form I-129 petition, and states that this error “is regrettable, but is not evidence of a lack of a bona fide job offer.” It is not, however, simply a matter of one forgotten petition. The director noted the existence of many other filings by the petitioner, but counsel dismisses this concern by arguing that a wider inquiry into the petitioner’s filing history “has little apparent relevance.”

The petitioner’s prior filing history is relevant when considering the bona fides of the job offer. The regulations at 8 C.F.R. §§ 204.5(m)(7)(iv) and (v) require the petitioner to attest to specific information about the number of petitions that the petitioner has recently filed, and the number of aliens currently or recently employed through those petitions. [REDACTED] signed the employer attestation on July 12, 2010, thereby certifying under penalty of perjury that the contents of the attestation were true and correct.

On parts 1c and 1d of the employer attestation, [REDACTED] in his capacity as an official of the petitioning organization, stated that the petitioner had employed “0” special immigrant or nonimmigrant religious workers in the past five years (July 12, 2005 to July 12, 2010), and that it had filed “0” Form I-360 and Form I-129 petitions on behalf of such aliens during that time.

Counsel argues that the petitioner’s filing history, and failure to disclose that history, do not “establish that this filing at this time lacks legitimacy” (counsel’s emphasis). Counsel states that, while caution “might have been sensible in the context of a less-well-documented petition,” in this instance the petitioner has submitted “substantial objective evidence that the Beneficiary is filling and has filled the position” specified in the petition.

USCIS’s concern, however, is prospective. The petitioner has indeed submitted evidence such as payroll documentation showing that the beneficiary has performed religious work for the petitioner since at least December 2009. The issue is whether this work would continue after the approval of the petition. Counsel acknowledges, on appeal, that the petitioner has filed immigrant petitions through which other workers have obtained permanent immigration benefits. Counsel does not, however, claim that those individuals still work for the petitioner. The petitioner has repeatedly claimed to have no paid employees, and to have paid no salaries for many of the past few years. It is, therefore, an uncontested matter of record that the petitioner has repeatedly obtained permanent

immigration benefits for aliens who, within a very short period of time, no longer worked for the petitioner.

USCIS records show the approval of five employment-based immigrant petitions filed by the petitioner since 2001, seeking permanent benefits for the beneficiaries. The approved petitions have the following receipt numbers: [REDACTED]

[REDACTED] USCIS approved another two nonimmigrant petitions with validity periods that fell within the five-year span covered by the employer attestation. The receipt numbers for those two petitions are [REDACTED] (valid through May 1, 2006).

Therefore, USCIS approved petitions for at least seven aliens who would have been eligible to work for the petitioner at some point between July 2005 and July 2010. This filing history is of concern when paired with the petitioner's claim to have no paid employees other than the beneficiary as of 2010, and to have rarely had other paid employees in the preceding years. The petitioner has established a documented pattern of petitioning for (often permanent) religious workers, but not retaining those employees. As an additional matter, the petitioner has misrepresented the number of its filings to USCIS under penalty of perjury. 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. Based on the petitioner's misrepresentations about the number of petitions it has filed in the past five years coupled with the fact that it is unclear whether it ever employed the seven aliens who are the beneficiaries of approved petitions and who would have been eligible to work for the petitioner at some point between July 2005 and July 2010, the petitioner has not established the validity of this prospective offer of employment.

For the reasons explained above, the AAO agrees with the director's finding that the petitioner, by making false declarations under penalty of perjury regarding its filing of prior petitions, has failed the compliance review process, and thereby cast doubt on the validity of the job offer.

The AAO will dismiss the appeal 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 met that burden.

ORDER: The appeal is dismissed.