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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

**PUBLIC COPY**

[Redacted]

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DATE: **MAY 19 2011** OFFICE: CALIFORNIA SERVICE CENTER [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, Vermont Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the Director, California Service Center, determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is a Sunni 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 minister and instructor. 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.

On appeal, the petitioner submits a brief from counsel.

Section 205 of the Act, 8 U.S.C. § 1155, states: “The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.”

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for “good and sufficient cause” where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner’s failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

*Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the director’s realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Id.* The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 589.

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 petitioner filed the Form I-360 petition on October 23, 2004. At that time, the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(1) required 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." The regulation at 8 C.F.R. § 204.5(m)(3)(ii)(A) required the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien had the required two years of experience in qualifying religious work.

In a letter accompanying the petitioner's initial filing, [REDACTED] the petitioner's executive director, stated that the beneficiary "has over 17 years of ministerial and teaching experience in the Muslim religion." Mr. [REDACTED] provided few details at that time. He also stated that the petitioner would pay the beneficiary \$26,000 per year.

The petitioner submitted copies of various certificates attesting to the beneficiary's training, but the only material relating to the beneficiary's work experience abroad was a letter from the headmaster of [REDACTED] Pakistan, indicating that the beneficiary "taught the Holy Quran in this Institution from 20 MAY, 1995 to 01 APRIL, 2002." This claimed employment ended more than six months before the two-year qualifying period began. The record contains other letters, submitted at other times, also attesting to employment before the two-year qualifying period.

The beneficiary spent most, but not all, of the qualifying period in the United States. On April 2, 2002, the day after the above employment ended, the beneficiary entered the United States under the Visa Waiver Program, admitted for a 90-day period not subject to extension of stay or change of status. The beneficiary's most recent entry, on August 8, 2003, was as a B-2 nonimmigrant visitor for pleasure. The beneficiary later held R-1 nonimmigrant status beginning September 1, 2004, less than two months before the petition's filing date.

On April 29, 2005, the director, Vermont Service Center, instructed the petitioner to submit financial documentation to establish its ability to compensate the beneficiary. The petitioner's response included payroll records for several employees from October 31, 2003 onward. The petitioner did not submit records showing that the beneficiary had received any salary, even though the petitioner had held R-1 nonimmigrant status permitting him to work for the petitioner since September 2004. An employee list dated July 20, 2005 did not include the beneficiary's name. Therefore, the petitioner's response to the April 2005 notice included no documentary evidence that the petitioner had ever employed the beneficiary. The response did, however, contain a June 15, 2005 pay receipt identifying the beneficiary's daughter as an employee. (Her name was not on the July 2005 employee list.)

The director, Vermont Service Center, approved the petition on August 1, 2005. The beneficiary filed a Form I-485 adjustment application, submitting with it an Internal Revenue Service (IRS) Form W-2 Wage and Tax Statement indicating that the petitioner paid the beneficiary \$1,500 in 2004. Pay records from 2005 and 2006 show a salary of \$250 per week. That amount annualizes to about \$13,000 per year, only half the proffered salary of \$26,000 per year. Assuming the same weekly salary of \$250, the IRS Form W-2 reflects six weeks of employment in 2004, although as an R-1 nonimmigrant, the beneficiary should have been able to work for the petitioner throughout the last four months of 2004. This suggests either that the beneficiary did not begin working for the petitioner until mid-November, 2004, or that he began working at an earlier date but then stopped before the end of the year.

Form G-325A, Biographic Information, accompanied the beneficiary's adjustment application. On that form, the beneficiary listed the following experience as a "religious teacher/worker":



January 2002-April 2002  
April 2002-April 2003  
April 2003-August 2003  
August 2003-July 2004  
August 2004-Present Time

The beneficiary indicated that he resided in [redacted] Massachusetts, during the uncompensated periods listed above.

While the petition was pending, USCIS published new regulations for special immigrant religious worker petitions. 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." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008).

During the compliance review process, USCIS found that [REDACTED], filed two religious worker petitions (one Form I-129 nonimmigrant petition and one Form I-360 special immigrant petition) on the beneficiary's behalf, both in June 2002. USCIS denied both petitions in 2006, following the 2004 conviction of [REDACTED] on charges stemming from a massive fraud scheme that included the filing of false immigration petitions on behalf of hundreds of aliens.

On May 11, 2009, a USCIS officer visited the petitioning school, and officials told the officer that the beneficiary worked at the school from September 13, 2004 until he took medical leave in May 2007. The next day, counsel called the officer to arrange an interview with [REDACTED]. The officer instructed counsel to bring financial documents and evidence that the beneficiary had actually worked for the petitioner. Mr. [REDACTED] and counsel arrived for the interview on May 14, 2009, but did not bring any of the requested documents. Counsel requested more time to submit the materials, but there is no evidence that the petitioner ever submitted them.

During the interview, Mr. [REDACTED] stated that he had met the beneficiary through the Islamic Center for New England. The imam of that center, [REDACTED] was ordered removed from the United States following his conviction on five counts of immigration fraud.

In a notice of intent to revoke dated April 15, 2010, the director notified the petitioner of the revised regulations, and noted the beneficiary's involvement with two different mosques tainted by immigration fraud. Given those facts, and the petitioner's inability to produce any persuasive evidence of the beneficiary's continued employment, the director stated: "it is believed that [the petitioner] is in connivance in helping the [beneficiary] obtain legal status through fraud."

In response to the notice, the petitioner submitted an affidavit in which the beneficiary maintained that he "was sure of [REDACTED] legitimacy," and that he "paid approximately \$2,500" for [REDACTED] to file the petitions on his behalf. When [REDACTED] failed to refer students to the beneficiary, the beneficiary "started to become suspicious. . . I felt that I had been swindled. I gave up on my application and I returned to Pakistan in April 2003." The beneficiary, therefore, admits that, in order to obtain immigration benefits, he paid a substantial sum to a man later convicted of charging aliens substantial sums for fraudulent immigration documents.

The beneficiary, in his affidavit, stated that he spent the period from June 2002 to April 2003 waiting for [REDACTED] to refer students to him. The last six months or so of that period took place within the two-year qualifying period. The beneficiary did not claim any other employment activity, or identify any site where he performed qualifying religious work, during those six months. The AAO notes that [REDACTED] supposed mosque, was located in Brooklyn, New York. The beneficiary previously indicated that he lived just south of Boston, more than 200 miles northeast of

Brooklyn, from April 2002 to April 2003. The beneficiary did not say where he expected the students to be.

The beneficiary acknowledged that he had worshiped at the Islamic Center of New England, but argued that the entire congregation is not responsible for the actions of one official of that mosque. The AAO agrees that this association, by itself, proves nothing, but the AAO will not dismiss as mere coincidence the beneficiary's repeated contact with at least two convicted perpetrators of immigration fraud during a period when he himself was actively seeking immigration benefits. These contacts are particularly significant in light of the petitioner's repeated failure to submit any reliable documentation, or even specific information about the beneficiary's employment activities during 2002-2004. Counsel condemned that the director arrived at derogatory conclusions with "not a scintilla of evidence," but the petitioner has fared little better in its efforts to show the beneficiary's continuous employment in qualifying religious work in 2002-2004.

The petitioner submitted further copies of documents relating to the beneficiary's past activities. As before, all these documents relate to periods of time well before the October 2002-October 2004 qualifying period.

The director issued a second notice of intent to revoke on November 24, 2010, focusing on the petitioner's failure to establish that the beneficiary worked continuously during the two-year qualifying period. In response, counsel stated that, in 2002, the beneficiary

Made a pilgrimage to Mecca (Hajj). He used the opportunity to study and lecture at various locations in Pakistan and the U.S. without compensation. He returned to his teaching job [in Pakistan] in April 2003 and stayed until August 2003 when he came to the U.S.

As we noted in the submission of April 2010, [the beneficiary] was the victim of a scheme perpetrated by a Mr. [REDACTED] where he was promised a teaching position. [The beneficiary] left the U.S. after he realized he was victimized by [REDACTED]. .

The accounting of the time as outlined above indicates that [the beneficiary] meets the requirements of the [petition] and said petition should not be revoked.

The petitioner submitted a second affidavit from the beneficiary, repeating the above information. As before, the beneficiary was fairly specific in the details of his activities and whereabouts up until 2002, at which point the narrative once again becomes vague about what the beneficiary did, and where he did it, before he accepted employment with the petitioner in late 2004.

The director revoked the approval of the petition on February 23, 2011. In the revocation notice, the director found that the petitioner had not documented the beneficiary's continuous, lawful employment throughout the qualifying period or established that interruptions in the continuity of the beneficiary's religious work were qualifying breaks.

The director cited the revised regulations at 8 C.F.R. §§ 204.5(m)(4) and (11). The director erred in doing so, because USCIS applies those regulations only to petitions pending on November 26, 2008, or newly filed after that date. USCIS approved the petition in 2005 and did not begin revocation procedures until 2010. Therefore, the petition was not pending on November 26, 2008, and the revised regulations do not apply. This error is not fatal to the decision, however, because the two-year employment requirement is a statutory one that the regulations have always reflected. It does mean, however, that USCIS cannot fault the petitioner for failing to meet specific new requirements, such as the submission of IRS documentation of compensation and the requirement that the beneficiary must have held lawful status. Nevertheless, even without these elements of the decision, there remains the basic conclusion that the petitioner has not adequately shown that the beneficiary meets the two-year employment requirement.

On appeal, counsel notes that the regulation at 8 C.F.R. § 204.5(m)(4) makes allowances for breaks in the continuity of religious work. Those allowances are new to the revised regulations, which (as we have explained) do not apply in this proceeding because the petition was not pending on November 26, 2008. Even if USCIS were to apply the new regulations, breaks in the continuity of the beneficiary's work must meet specified conditions spelled out in the regulation at 8 C.F.R. § 204.5(m)(4), quoted in full elsewhere in this decision. The petitioner has not shown that the claimed breaks meet all of those conditions. One of those conditions is that the alien was still employed as a religious worker. The petitioner has not explained how the beneficiary meets this requirement, because there are long stretches where the petitioner has not shown that the beneficiary had any employer. The beneficiary has repeatedly claimed that he returned to his employer in Pakistan from April 2003 to August 2003, but the record contains no evidence to that effect, and no evidence that the beneficiary remained an employee of the mosque in Pakistan after he returned to the United States in August 2003.

Counsel devotes much of the appellate brief to a discussion of a three-month vacation that the beneficiary took in 2001. The director had questioned how the beneficiary managed to take such a long vacation without losing his job. Counsel begins this discussion by noting that the vacation took place before the two-year qualifying period. The AAO agrees, and therefore details of this argument would serve no useful purpose in this decision.

Counsel repeats the claim that, between formal, paid appointments, the beneficiary "used the opportunity to study and lecture at various locations in Pakistan and the U.S. without compensation." Counsel argues that the beneficiary need not have received payment for this work. It is true that the regulations in effect until 2008 included no such requirement. Nevertheless, the petitioner must still demonstrate that qualifying religious work took place. The petitioner has never identified the "various locations" where the beneficiary supposedly worked, let alone produced corroborating evidence. 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 petitioner cannot shrug off its burden of proof by substituting the adjective “various” for specific, verifiable information.

The statute and regulations, both old and new, require the beneficiary to have performed qualifying religious work for at least two years immediately preceding the petition’s filing date. The AAO agrees with the director that the petitioner has not met this burden, having provided incomplete and inconsistent evidence regarding the beneficiary’s work for the petitioner, and nothing at all for the remainder of the two-year period. USCIS approved the petition in error, and properly revoked that approval. The petitioner, on appeal, has not overcome the grounds for revocation.

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. Accordingly, the AAO will dismiss the appeal.

**ORDER:** The appeal is dismissed.