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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**



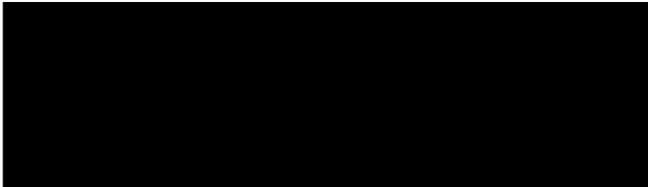
C1

DATE: **MAY 31 2011** OFFICE: CALIFORNIA SERVICE CENTER 

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)

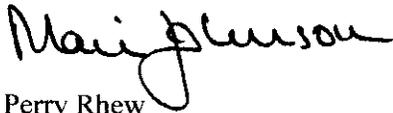
ON BEHALF OF PETITIONER:



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.

Thank you,

  
S 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 withdraw the director's decision and remand the petition for further action and consideration.

The petitioner is an Islamic mosque. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as an imam. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous, lawful work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits documentation showing that USCIS now considers the beneficiary to have been in lawful immigration status throughout the two-year qualifying period.

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 . . . ; 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 in this proceeding is whether the beneficiary worked with lawful immigration status and employment authorization throughout the two-year qualifying period. 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 USCIS regulation at 8 C.F.R. § 204.5(m)(11) requires that qualifying prior experience, if acquired in the United States, must have been authorized under United States immigration law.

The petitioner filed the Form I-360 petition on August 31, 2009. On that form, the petitioner listed the beneficiary's "Current Nonimmigrant Status" as an R-1 nonimmigrant religious worker. Asked for the expiration date of that status, however, the petitioner answered "2/28/2009," indicating that the beneficiary's R-1 nonimmigrant status expired six months before the petitioner filed the petition.

The director denied the petition on May 13, 2010, stating:

The beneficiary's R1 Religious Worker visa expired on 2/28/2009, after which date the beneficiary failed to maintain legal non immigrant status. Although the beneficiary had timely filed an Application to Extend Status, this application was denied and remains pending on appeal. The instant I-360 Special Immigrant Religious Worker petition was filed on 8/31/2009, at which time, the beneficiary was not maintaining R1 status. Hence, the beneficiary has failed to maintain legal non immigrant status and any work performed by the beneficiary in the United States in pursuance of the beneficiary's religious commitment to the [petitioner] has not been authorized by immigration law.

The petitioner filed an appeal on June 15, 2010, at which time counsel requested an additional 30 days to prepare an appellate brief. During that period, on July 7, 2010, the AAO sustained the appeal mentioned by the director and approved the petitioner's nonimmigrant petition on the beneficiary's behalf. USCIS approved the request for extension of stay that accompanied that petition. The beneficiary's extension of stay granted him two additional years of lawful status and employment authorization beginning February 28, 2009, effectively continuing his prior R-1 nonimmigrant status without interruption.

In the appellate brief, counsel correctly observes that the approval of the extension request essentially erases the only stated basis for denial.<sup>1</sup> The original ground for denial no longer exists, and the AAO's appellate review of the record has revealed no new grounds for denial. In keeping with the USCIS regulation at 8 C.F.R. § 204.5(m)(12), the AAO remands the petition for additional processing. If routine checks and any necessary follow-up reveal no new basis for denial, the AAO instructs the director to approve the petition. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, the director must certify to the Administrative Appeals Office for review.

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<sup>1</sup> The director's decision contains a passing observation, expressing concern at the apparent lack of a permanent job offer, but the director did not cite this as a basis for denial. The AAO notes that the initial submission includes an August 27, 2009 letter from [redacted] vice chairperson of the petitioner's board of trustees, stating that the petitioner "wishes to continue [the beneficiary's] employment on a permanent basis" and "is pleased to offer [the beneficiary] a full-time permanent position as a paid Imam."