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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: **AUG 07 2012** 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:

SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 reject the appeal, or in the alternative, dismiss the appeal.

The petitioner 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 at Mesquite Islamic Center in Mesquite, Texas. The director determined that the petitioner had not established that the beneficiary had the required two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

The petitioner submits no further evidence on appeal. On the Form I-290B, Notice of Appeal, the petitioner indicated that a brief and additional documents would be submitted within 30 days. However, no further documents have been received as of the date of this decision, so the record will be considered complete as it now stands.

The record shows that the petition was not properly filed, and therefore there is no valid proceeding upon which to base an appeal. Part 1 of the Form I-360 petition identifies Mesquite Islamic Center as the petitioner. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.2(a)(2) states: "An applicant or petitioner must sign his or her application or petition." That same regulation generally requires a handwritten signature unless the petition is filed electronically. It makes no provision for proxy signatures.

In this instance, the signature on Part 10 of the Form I-360 belongs not to any official from Mesquite Islamic Center, but to that organization's attorney. Thus, the attorney, and not the church, has taken responsibility for the content of the petition. This effectively makes the attorney the petitioner, rather than counsel to the petitioner.

The USCIS regulation at 8 C.F.R. § 204.5(m)(6) states, in part: "A petition must be filed as provided in the petition form instructions either by the alien or by his or her prospective United States employer." Here, the petitioner (*i.e.*, the party who signed the petition) is neither the alien nor her prospective United States employer, but the prospective employer's attorney. The attorney (based in New York) is not an official of Mesquite Islamic Center (based in Texas), and his role as an attorney does not permit him to sign the Form I-360 on the church's behalf.

An earlier version of the regulation at 8 C.F.R. § 204.1(d), as in effect in 1991, required that "the petitioner *or authorized representative* shall sign the visa petition (under penalty of perjury) in the block provided on the form" (emphasis added). That regulation governed employment-based immigrant petitions at the time. The present regulations contain no provision allowing an attorney or other third party to sign a petition form on behalf of an intending employer. The regulation at 8 C.F.R. § 204.5(a)(1) requires that employment-based immigrant petitions must be accepted for processing under the provisions of 8 C.F.R. § 103. As stated above, the regulation at 8 C.F.R. § 103.2(a)(2) provides that the petitioner must sign the petition and does not include the "or

authorized representative” language that previously applied to such petitions up through 1991. Had legacy Immigration and Naturalization Service, now USCIS, intended to continue to allow authorized representatives to sign employment-based immigrant petitions, the agency would not have stricken the regulatory language expressly allowing them to do so.

The AAO notes that the signature block on the Form I-290B Notice of Appeal reads: “Signature of Person Filing the Appeal/Motion or His or Her Authorized Representative.” The signature block on the Form I-360 petition makes no comparable provision for representatives.

There is no regulatory provision that waives the signature requirement for a petitioning U.S. employer or that permits a petitioning U.S. employer to designate an attorney or accredited representative to sign the petition on behalf of the U.S. employer. The petition has not been properly filed because neither the alien nor [REDACTED] signed the petition. Under the regulation at 8 C.F.R. § 103.2(a)(7)(i), an application or petition which is not properly signed shall be rejected as improperly filed, and no receipt date can be assigned to an improperly filed petition. While the Service Center did not reject the petition, the AAO is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 at 3 (E.D. La.), *aff’d*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001).

The signature line on the Form I-360 provides that the petitioner is certifying, “under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it [are] all true and correct.” To be valid, 28 U.S.C. § 1746 requires that declarations be “subscribed” by the declarant “as true under penalty of perjury.” *Id.* In pertinent part, 18 U.S.C. § 1621, which governs liability for perjury under federal law, mandates that: “Whoever in any declaration under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true is guilty of perjury.” 18 U.S.C. § 1621.

The probative force of a declaration subscribed under penalty of perjury derives from the signature of the declarant; one may not sign a declaration “for” another. Without the petitioner’s actual signature as declarant, the declaration has no evidentiary force. *See In re Rivera*, 342 B.R. 435, 459 (D. N.J. 2006); *Blumberg v. Gates*, No. CV 00-05607, 2003 WL 22002739 (C.D.Cal.) (not selected for publication).

The AAO notes that an entirely separate line exists for the signature of the preparer declaring that the form is “based on all information of which [the preparer has] knowledge.” Thus, the Form I-360 itself acknowledges that a preparer who is not the petitioner cannot attest to the contents of the petition and supporting evidence. Rather, the preparer may only declare that the information provided is all the information of which he or she has knowledge. Moreover, the AAO notes that the unsupported assertions of an attorney do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Thus, an attorney’s unsupported assertions

on the petition form have no evidentiary value. Here, the same attorney signed the signature blocks for the petitioner and for the preparer.

The integrity of the immigration process depends on the actual employer signing the official immigration forms under penalty of perjury. Allowing an attorney to sign the petition would leave the immigration system open to fraudulent filings. While the AAO does not allege any malfeasance in this matter, we note prior examples where attorneys have been convicted of various charges, including money laundering and immigration fraud, after signing immigration forms of which the alien or claimed employer had no knowledge. *United States v. O'Connor*, 158 F.Supp.2d 697, 710 (E.D. Va. 2001); *United States v. Kooritzky*, Case No. 1:02CR00502 (E.D. Va. December 11, 2002).

The AAO notes that the signatures of [REDACTED] official appear elsewhere on petition documents, such as on an employer attestation. These signatures, however, attest only to those specific parts of the petition form, not to the integrity of the entire petition, including supporting materials and information.

Only the alien or the intending employer may file Form I-360 for a special immigrant religious worker. Because the party that filed the petition is neither of these, the petition was not properly filed and there is no lawful proceeding upon which to base an appeal. The AAO must therefore reject the appeal.

Even if properly filed, the evidence submitted does not establish eligibility for the benefit sought. Therefore, in the alternative, the AAO would dismiss the appeal.

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 USCIS regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the alien 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 petition was filed on August 28, 2009. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work in lawful status throughout the two-year period immediately preceding that date.

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

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.

According to the Form I-360 petition and accompanying materials, the beneficiary entered the United States on October 4, 2005 in R-1 nonimmigrant status which authorized his employment

with the organization listed on his visa, [REDACTED] until October 3, 2008. At the time of filing, the petitioner also submitted an Approval Notice indicating that a Form I-129, Petition for a Nonimmigrant Worker, was filed on behalf of the beneficiary by the [REDACTED], and was subsequently approved with the validity dates listed as June 26, 2006 to May 31, 2009.

On the Form I-360 petition, the petitioner described the beneficiary's qualifications as follows:

*The alien holds a bachelors Degree in Islamic Studies from Al-Azhar University in May 1994

*the alien was employed at he [sic] Ministry of Awqaf in the year 2000 and continued for over 5 years. He worked at the Islamic Community Center for 8 months & also the Muslim American Society of MN till July 2009. He possessed almost 9 years experience.

As evidence of the beneficiary's work history during the two-year qualifying period immediately preceding the filing of the petition, the petitioner submitted a signed "Job Contract" between the beneficiary and [REDACTED], dated August 1, 2009, setting forth the terms of the beneficiary's employment as Imam. Additionally, the petitioner submitted copies of the beneficiary's Forms W-2 and tax returns from 2007 and 2008, which indicated that the beneficiary earned \$34,300 in 2007 and \$44,872 in 2008 from the Muslim American Society, located in Chandler, Arizona. The tax forms indicated that the beneficiary resided in Chandler, Arizona during those years.

On the beneficiary's Form G-325A, Biographic Information, the beneficiary stated that he was employed as Imam for [REDACTED] from October 2005 to July, 2009 and as [REDACTED] from August 2009 to the present. However, on the same form, the beneficiary indicated that he resided in Inver Grove Heights, Minnesota from October 2005 to March 2007 and subsequently resided in Arizona until July 2009.

No explanation was provided for the discrepancies regarding the beneficiary's actual employers during the qualifying period. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Furthermore, the record does not indicate that the beneficiary held authorization to work for the [REDACTED] during the two-year qualifying period immediately preceding the filing of the petition, therefore any work performed by the beneficiary for that organization would constitute a failure to maintain lawful status and would not be considered qualifying experience.

The regulations at 8 C.F.R. §§ 214.2(r)(3)(ii)(E)(2006), as were in effect when the beneficiary was approved to work for Muslim American Society of MN as an R-1 nonimmigrant, required an authorized official of the organization to provide the “name and location of the **specific organizational unit** of the religious organization” for which the alien would work (emphasis added). The regulation at 8 C.F.R. § 214.2(r)(6) stated:

Change of employers. A different or additional organizational unit of the religious denomination seeking to employ or engage the services of a religious worker admitted under this section shall file Form I-129 with the appropriate fee ... Any unauthorized change to a new religious organizational unit will constitute a failure to maintain status...”

Further, the regulation at 8 C.F.R. § 214.1(e) provides that a nonimmigrant may engage only in such employment as has been authorized. Any unlawful employment by a nonimmigrant constitutes a failure to maintain status.

In this instance, the beneficiary’s R-1 status only authorized his employment with the named employer, [REDACTED]. Regardless of any affiliation between [REDACTED] in Inver Grove Heights, Minnesota and Muslim American Society in Chandler, AZ, the beneficiary was not authorized to engage in employment with any affiliated organization without first obtaining authorization through a separate Form I-129 petition.

On May 25, 2011, USCIS issued a Notice of Intent to Deny the Petition. The director stated that, although Mesquite Islamic Center filed a petition for change of employer and extension of nonimmigrant status on August 17, 2009, the evidence indicated that the beneficiary began working for that organization prior to the approval of that petition and therefore engaged in unauthorized employment. The director further noted that, although [REDACTED] petition was originally approved, the record indicates that USCIS later reopened the matter, ultimately denying the petition on July 31, 2007 and rendering the beneficiary without lawful status or employment authorization as of that date.

In response, the petitioner asserted that the beneficiary “held valid R-1 status until May 31, 2009” and resubmitted a copy of the approval notice issued to [REDACTED]. The petitioner further stated that the R-1 extension petition filed by Mesquite Islamic Center, although initially denied, was appealed and ultimately approved. The petitioner submitted a copy of an approval notice for that employer with validity dates of May 24, 2011 to November 23, 2013. The petitioner also submitted a copy of an Employment Authorization Card issued to the beneficiary with validity dates of December 17, 2009 to December 16, 2011.

On September 14, 2011, the director denied the petition, finding that the beneficiary engaged in unauthorized employment and therefore the petitioner failed to establish that the beneficiary was lawfully employed as a religious worker for at least the two years immediately preceding the filing of the petition.

On the Form I-290B, Notice of Appeal, the petitioner states the following:

The decision made by the USCIS to deny the instant I-360 petition is incorrect. The USCIS failed to process the beneficiary's R-1 visa status within an appropriate time, although numerous inquiries were made. The USCIS took over 2 years to process the R-1 visa transfer.

(Brief and additional documents to the appeal will be submitted within 30 days)

As stated above, no further documents have been received, so the AAO will consider the record complete as it now stands.

To the extent that the petitioner argues that the beneficiary's failure to maintain lawful status during the qualifying period was caused by a delay in USCIS' approval of [REDACTED] Form I-129 petition, the AAO disagrees. The beneficiary received R-1 approval which authorized his employment with [REDACTED] with validity dates of June 26, 2006 to May 31, 2009, although the matter was subsequently reopened and denied on July 31, 2007. Therefore, the beneficiary was without lawful status or employment authorization prior to [REDACTED] filing of the Form I-129 petition on August 17, 2009. Furthermore, as discussed above, the evidence indicates that the beneficiary was not working for [REDACTED] during the qualifying period, but rather was engaged in unauthorized employment with [REDACTED] in Chandler, Arizona.

Additionally, the petitioner has not established that the beneficiary was continuously performing qualifying work during the two years immediately preceding the filing of the petition. On the Form I-360 petition, the petitioner asserted that the beneficiary was employed by [REDACTED] until July 2009 and the petitioner submitted a copy of the beneficiary's employment contract with [REDACTED] dated August 1, 2009. However, the petitioner has not submitted evidence to establish that the beneficiary was employed by the [REDACTED] during the qualifying period. 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 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Although the petitioner did submit tax documentation to establish that the beneficiary was employed by [REDACTED] in Chandler, Arizona during a portion of the qualifying period, the petitioner has not submitted evidence to show the beneficiary's dates of employment with that organization or the nature of his work. Therefore, the petitioner has not established the continuity of the beneficiary's employment during the qualifying period, nor has it established that the beneficiary was performing qualifying religious work.

For the reasons discussed above, the AAO agrees with the director's finding that the petitioner has not established that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition.

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, if the AAO did not reject the appeal, it would dismiss the appeal.

ORDER: The appeal is rejected or, in the alternative, dismissed.