



U.S. Citizenship
and Immigration
Services

C1

[Redacted]

Date:

DEC 18 2012

Office: CALIFORNIA SERVICE CENTER

FILE:

[Redacted]

IN RE:

Petitioner:
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 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,


Ron Rosenberg
Acting 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 self-petitioner¹ seeks classification 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 [REDACTED]. The director determined that the evidence did not establish that self-petitioner had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the self-petitioner submits a brief from counsel, an affidavit from the self-petitioning alien, copies of the self-petitioner's passport, a March 8, 2012 Policy Memorandum from U.S. Citizenship and Immigration Services (USCIS) regarding "Procedures for Calculating the Maximum Period of Stay for R-1 Nonimmigrants," as well as copies of documents already in the record.

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

¹ Part 1 of the Form I-360 petition identifies Garden State Islamic Center as the petitioner. Review of the petition form, however, indicates that the alien is the petitioner. An applicant or petitioner must sign his or her application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, Part 10 of the Form I-360, "Signature," has been signed not by any official of Garden State Islamic Center, but by the alien himself. Thus, the alien, and not the employer, has taken responsibility for the content of the petition. The petition was properly filed, because the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(6) allows the alien to file the Form I-360 petition on his or her own behalf. Also, the attorney who filed the appeal represents the alien, and therefore the appeal has also been properly filed.

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 October 25, 2011. Therefore, the self-petitioner must establish that he 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.

Accompanying the Form I-360 petition, the self-petitioner submitted evidence that he was granted R-1 nonimmigrant status with validity dates of May 15, 2005 to May 14, 2008, which authorized his employment with [REDACTED]. The petitioner additionally submitted evidence that on September 12, 2011, he entered the United States in R-1 nonimmigrant status with an expiration date of September 11, 2014, authorizing his employment with [REDACTED].

On the Form I-360 petition, the petitioner listed his prospective employer as [REDACTED] and indicated that he will be working at [REDACTED]. The petitioner submitted a copy of [REDACTED] Form 941, Employer's Quarterly Federal Tax Return for the second quarter of 2011, which identified the petitioner as the organization's only paid employee for the quarter earning compensation in the amount of \$5,000.01 for that period. The petitioner also submitted copies of internal [REDACTED] "Earnings Records" and "Payroll Journal" documents from 2011 indicating that he was a paid employee of that organization. On the petitioner's Form G-325A, Biographic Information, submitted with his concurrently filed Form I-485, Application to Register Permanent Residence or Adjust Status, the petitioner indicated that he has been employed by [REDACTED] since July of 2008.

The petitioner submitted evidence that [REDACTED] was incorporated in the state of New Jersey on April 16, 2004, and that it holds a valid determination letter from the Internal Revenue Service (IRS) confirming that it is tax-exempt under section 501(c)(3) of the Internal Revenue Code. The letter identified [REDACTED] employer identification number as [REDACTED].

A schedule for [REDACTED] submitted with the petition, listed various activities held "at [REDACTED]. An undated document providing information about [REDACTED] stated that it "is a non-profit organization that is being planned by the mother organization, [REDACTED]. A printout from [REDACTED] is the parent organization of [REDACTED] which is located at [REDACTED]. Both [REDACTED] will be under the same management and will be governed under the same bylaws." Another undated document submitted with the petition described the relationship between [REDACTED] as follows:

[REDACTED] (a house bought by few Muslim brothers and sisters) has been just used as a (Masjid) Prayer Place for the last several years. Where Muslims can come together. And practice their faith. After realizing that number of attendees are increasing and we need a Imam (person who can lead the prayers five times in a day) the organization decided to hire an indivisual [sic] who can be there most of the time for the teachings of Islam. Along with that a bigger place for prayer became a need of the community. And we bought a piece of land to build a bigger building and name it [REDACTED] is registered organization will be working under a proper tax ID. And [REDACTED] will be working for [REDACTED] as an Imam and serving the Muslim Community. Therefore BIC and [REDACTED] should be considered as the same organization working under the same management and group of people.

On November 16, 2011, USCIS issued a Request for Evidence which in part requested additional evidence regarding the alien's work history during the two year qualifying period immediately preceding the filing of the petition. The notice specifically instructed the petitioner to submit experience letters from previous and current employers providing detailed information about the

work performed by the alien, and to submit evidence of compensation including copies of the alien's Forms W-2, certified copies of tax returns, and an itemized earnings record from the Social Security Administration (SSA). The notice additionally instructed the petitioner to submit evidence that the petitioner held employment authorization during any periods of employment in the United States.

In response to the notice, the petitioner submitted a copy of his 2011 Form W-2, indicating that he earned \$20,000.04 from Garden State Islamic Center is Deerfield St., New Jersey during that year. He also submitted a copy of Garden State Islamic Center's Form W-3 for 2011 listing one employee earning a total of \$20,000.04 for the year, as well as additional copies of Forms 941 and internal payroll records for the organization for the year 2011. Additionally, the petitioner submitted a May 20, 2005 check from [REDACTED] to the petitioner for \$1,200 with the notation "Imam."

In a letter responding to the notice, counsel asserted that "[REDACTED] remains in the same position as his current valid R-1 status." Counsel also clarified that [REDACTED] employer identification number is [REDACTED] and stated: "[t]he tax ID number listed on the Form I-360 is incorrect, and reflects the prior organization name, [REDACTED]. The petitioner submitted a letter from the vice president of [REDACTED] which stated, in part:

At the time of his initial R-1 approval, the name of our congregation was [REDACTED]. After realizing we needed a larger place for prayer for our growing population, we bought a piece of land for the construction of [REDACTED] which is an organization, headquartered in Deerfield, New Jersey with proper tax identification. [REDACTED] is in need of an Imam who can lead prayers five times a day and dedicate his work to the teaching of Islam. His current occupation and all job duties remain the same since his R-1 approval.

Regarding the assertions by counsel and [REDACTED] is merely a former name of [REDACTED], the AAO notes that the evidence does not support such assertions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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)). The petitioner has not submitted evidence indicating a name change of either organization. Rather, the evidence submitted indicates that [REDACTED] have two distinct employer identification numbers. Further, the vice president of [REDACTED] stated: "At the time of [the petitioner's] initial R-1 approval, the name of our congregation was [REDACTED]." However, the petitioner submitted evidence that [REDACTED] was incorporated in April of 2004, while the petitioner was first granted R-1 status in May of 2005. Additionally, in response to the Request for Evidence, the petitioner submitted a copy of meeting minutes from March 25, 2011 which include a discussion of

the “non-profit status of [REDACTED] with a comment that [REDACTED] was registered non-profit with the state of NJ only.” This suggests the continued existence in 2011 of [REDACTED] as a separately registered non-profit organization. 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).

On March 9, 2012, the director issued a decision denying the petition. The director noted that INA 101(a)(15)(R)(ii) provides that an alien may only hold nonimmigrant religious worker status “for a period not to exceed 5 years.” The director found that, through consular processing, the petitioner had erroneously been granted R-1 status in excess of five years, and that “from May 14, 2010 to the date of filing the current petition, the beneficiary had no lawful immigration status.” The director concluded that the evidence failed to establish that the alien had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition.

On appeal, the petitioner submits evidence that, subsequent to being granted R-1 status beginning May 15, 2005, he returned to his home country of Turkey on September 23, 2005, and did not reenter the United States until January 1, 2009. The evidence shows that on January 1, 2009 and on several subsequent dates, the petitioner entered the United States pursuant to an R visa and was admitted in R-1 status authorizing his employment with [REDACTED]. The petitioner’s most recent entry was on September 12, 2011, when he was admitted in R-1 status expiring on September 11, 2014. Counsel correctly asserts that periods spent outside the United States do not count toward the 5-year maximum period of stay in R-1 nonimmigrant status. Accordingly, based on the evidence submitted on appeal, the AAO disagrees with the director’s finding that the alien’s R-1 status expired on May 14, 2010.

However, while the AAO disagrees with the director’s statement of facts as discussed above, the AAO agrees that the evidence is insufficient to establish that the petitioner has been performing full-time work as an Imam for at least the two-year period immediately preceding the filing of the petition in lawful immigration status.

The regulation at 8 C.F.R. § 274a.12(b)(16) allows an R-1 nonimmigrant to work only for the religious organization that obtained R-1 status for the alien. The regulation at 8 C.F.R. §§ 214.2(r)(2) and (13) provide that “[a]n alien may work for more than one qualifying employer as long as each qualifying employer submits a petition plus all additional required documentation as prescribed by USCIS regulation” and that an R-1 “may not be compensated for work for any religious organization other than the one for which a petition has been approved or the alien will be out of status.” The prior regulation in effect when the petitioner was first approved for R-1 status similarly indicated that the petitioner could only work for the specific organizational unit of the religious organization which would be employing the alien and that a different or additional organizational unit seeking to employ the alien must file a new petition as any unauthorized change to a new unit will constitute a failure to maintain status. 8 C.F.R. § 214.2(r)(3)(ii)(E) and (6)(2005).

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 self-petitioner's R-1 status during the qualifying period only authorized his employment with the named employer, [REDACTED]. Regardless of any affiliation or shared management between that organization and [REDACTED] the self-petitioner was not authorized to engage in employment even with any affiliated organization or organizational unit without first obtaining authorization through the filing of a separate Form I-129 petition. By working for [REDACTED] the self-petitioner engaged in unauthorized employment, thereby failing to maintain his R-1 nonimmigrant status during the qualifying period.

Additionally, the AAO finds that the petitioner has not submitted sufficient evidence of continuous, compensated employment during the two years immediately preceding the filing of the petition. The regulation at 8 C.F.R. § 204.5(m)(11) requires compensated employment. The petitioner must submit evidence of prior salaried or non-salaried 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 he participated in such a program. Although the two-year qualifying period in this case includes part of 2009 and all of 2010, the petitioner has submitted no evidence of compensation from any employer during either of those years.

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 date of the petition.

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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.