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

[redacted]

Date: **DEC 1 8 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 petitioner is a 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 a pharmacist and teacher. The director determined that the petitioner failed to establish that it qualifies as a bona fide non-profit religious organization in the United States.

On appeal, the petitioner submits a copy of an Internal Revenue Service (IRS) Record of Account, a tax parcel listing printout for the petitioner's address, copies of the petitioner's 1998 and 2004 applications for property tax exemption in Forsyth County, North Carolina, and a letter from [redacted] On the Form I-290B, Notice of Appeal or Motion, filed on July 6, 2012, counsel indicated that the petitioner would submit a brief and additional evidence to the AAO within 30 days. A review of the record reveals that no brief or additional evidence has been received. Therefore, the record will be considered complete as it now stands.

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;
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> (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
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> (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 United States Citizenship and Immigration Service (USCIS) regulation at 8 C.F.R. § 204.5(m)(3) provides that in order to be eligible for classification as a special immigrant religious worker, an alien must be coming to work for a bona fide non-profit religious organization in the United States, or a bona fide organization which is affiliated with the religious denomination in the United States. The regulation at 8 C.F.R. § 204.5(m)(5) states, in pertinent part:

> (5) Definitions. As used in paragraph (m) of this section, the term:
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> *Bona fide non-profit religious organization in the United States* means a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the IRS confirming such exemption.
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> *Bona fide organization which is affiliated with the religious denomination* means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code and possessing a currently valid determination letter from the IRS confirming such exemption.

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

> *Evidence relating to the petitioning organization.* A petition shall include the following initial evidence relating to the petitioning organization:
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> (i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or
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> (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or
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> (iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, as something other than a religious organization:
>
> (A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;

> (B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;
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> (C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and
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> (D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

The petitioner filed the Form I-360 petition on January 17, 2012. The petitioner did not submit any evidence regarding its tax-exempt status at the time of filing

On February 3, 2012, USCIS issued a Request for Evidence (RFE) which, in part, instructed the petitioner to submit documentary evidence that it qualifies as a non-profit organization in accordance with 8 C.F.R. § 204.5(m)(8). The notice specifically instructed the petitioner to submit a determination letter from the IRS indicating the petitioner's Employer Identification Number (EIN) and confirming that it is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code.

In a letter responding to the request, the petitioner referred to "the Tax exempt letter attached," but no such letter was submitted. The petitioner submitted a copy of its bylaws.

The director denied the petition on June 5, 2012, noting that the petitioner was specifically requested to provide a currently valid determination letter from the IRS confirming its exemption from taxation as described in section 501(c)(3) of the Internal Revenue Code but failed to provide such evidence. The director therefore found that the petitioner had not established that it qualifies as a bona fide nonprofit religious organization in the United States.

On appeal, the petitioner submits an IRS Record of Account for the petitioner's employer identification number which states: "No record of return filed." The petitioner also submits evidence relating to its property tax exemption in Forsyth County, North Carolina, as well as evidence of the Nash County property tax exemption for another Mosque, the

The AAO notes that the evidence submitted on appeal is insufficient under the requirements of 8 C.F.R. § 204.5(m)(8). Regardless, at issue here is whether the record before the director established that the petitioner was a tax-exempt organization. As previously indicated, at the time the petition was filed, the petitioner submitted no evidence of a currently valid determination letter from the

IRS. In response to the RFE, the petitioner again failed to submit qualifying documentation of its federal tax-exempt status. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r. 1971). Although counsel asserted on appeal that additional evidence would be submitted on this issue, the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated.

Accordingly, the AAO finds no error on the part of the director in determining that the petitioner failed to establish that it qualifies as a bona fide nonprofit religious organization.

As an additional matter, the AAO finds 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. 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. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work in lawful status throughout the two-year period immediately preceding January 17, 2012.

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:
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> > (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.
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> > (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.
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> > (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 evidence, the beneficiary most recently entered the United States on June 4, 2011 in H1B nonimmigrant status authorizing his employment with The petitioner submitted a certificate indicating that the beneficiary was licensed by the on December 23, 2009.

In the February 3, 2012 RFE, USCIS instructed the petitioner to submit experience letters from current and former employers including a weekly breakdown of duties, "specific dates of employment, specific job duties, number of hours worked per week, form and amount of compensation, and level of responsibility/supervision." The notice also instructed the petitioner to submit evidence that the beneficiary received compensation or evidence of self-support during the qualifying period.

In response to the notice, the petitioner submitted a letter from the Rocky Mount Islamic Center in Rocky Mount, North Carolina. The letter stated in part:

> The Islamic center of filled several positions and roles during his time with the Islamic center of (February 1, 2009- September 30, 2011). **was committed to his duties as a volunteer and did not take any monetary compensation** for his efforts. On average volunteered 35 hours a week while working as a pharmacist at Rite Aid pharmacy.

(Emphasis added.) The letter went on to describe the beneficiary's duties for that organization. The petitioner also submitted copies of the beneficiary's Forms W-2 for 2010 and 2011, which indicated that he earned $130,469.46 and $79,710.28 from in those years respectively. Additionally, the petitioner submitted an uncertified copy of the beneficiary's Form 1040EZ tax return for 2009, which listed total income of $42,076 for the year but did not identify the source of his income.

Regarding the petitioner's claim of the beneficiary's volunteer religious work within the United States, such work is not considered to be qualifying experience. 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 cannot be considered qualifying employment.

Further, the AAO notes that the beneficiary's purported volunteer work for covers only a portion of the two-year qualifying period immediately preceding the filing of the petition. The petitioner has not submitted any evidence to show that the beneficiary was engaged in religious work between September 30, 2011 and the filing of the petition on January 17, 2012.

For the reasons discussed above, the AAO finds 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.

Finally, the AAO finds that the petitioner has not established how it intends to compensate the beneficiary. The USCIS regulation at 8 C.F.R. § 204.5(m)(10) states:

> *Evidence relating to compensation.* Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

On the Form I-360 petition, the petitioner indicated that the beneficiary would receive "non-salaried compensation." The February 3, 2012 RFE instructed the petitioner to submit documentary evidence of the proposed non-salaried compensation.

In a letter responding to the RFE, the petitioner stated that the beneficiary's compensation would include "Mosque owned room and board (value $800 per month)" and "Groceries supplied by Mosque (value $500 per month)." The petitioner submitted a copy of a Residential Lease Agreement dated January 1, 2012 between the petitioner and the beneficiary for a property at Although the petitioner's RFE response letter had indicated that the beneficiary's housing would be provided as part of his compensation, the lease indicated that the beneficiary would pay the petitioner $800 per month as rent. 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).

No IRS documentation was submitted regarding the petitioner's ability to compensate the beneficiary, nor was an explanation for its absence provided along with comparable, verifiable documentation.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.