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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: **FEB 01 2012**

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.

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, California Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director revoked the approval of the petition on notice. The Administrative Appeals Office (AAO) remanded the matter for further consideration. The director again revoked the approval of the petition and certified the decision to the AAO for review. The AAO will affirm the director's decision.

The petitioner is an Islamic community center including a mosque and a school. It previously sought 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 work experience as an imam immediately preceding the filing date of the petition. The director also noted discrepancies that came to light during site inspections of the petitioning entity and another Islamic community center. The AAO withdrew the director's decision and remanded the matter for further consideration.

Subsequently, the director again revoked the approval of the petition, stating that the petitioner had failed to establish the continued existence of the job offer in place at the time of filing.

In response to the certified decision, the petitioner submits a brief from counsel and supporting documents.

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 . . . ; 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).

Rather than repeat all of the information from its January 19, 2011 decision here, the AAO incorporates that decision by reference. The relevant information from that decision follows.

The petitioner filed the Form I-360 petition on October 2, 2003. In an accompanying letter, [REDACTED] petitioning center, stated that the beneficiary "is currently compensated with a monthly stipend of \$1,000. We expect to raise his annual salary over the next year and provide him with assistance for his housing." The petitioner submitted copies of pay receipts and Internal Revenue Service (IRS) Form W-2 Wage and Tax Statements to show prior monthly payments of \$1,000 each.

The director, Nebraska Service Center, approved the petition on June 22, 2004. During a May 2007 site inspection of the petitioning center, [REDACTED] told the inspecting officer that the beneficiary left his job with the petitioner in December 2006 and began working full time for another religious institution.

The director revoked the approval of the petition on April 30, 2009, citing perceived discrepancies between the statements of various witnesses (including the beneficiary) during various site inspections. The AAO reversed that decision in its January 2011 remand order, but stated:

[A] major issue remains to be addressed. For the classification sought, it cannot suffice to show that the beneficiary holds the necessary qualifications to serve as a religious worker. Under both the old and the new versions of the regulations, a petition for classification as a special immigrant religious worker requires a specific job offer from a specific employer. In this instance, the 2003 petition now on appeal rested on an offer to serve as an imam at the petitioner's mosque. The beneficiary, however, left that position

in December 2006. According to the May 2007 site visit report, [REDACTED] explained “there wasn’t enough membership to support a second imam.”

No one contests that the beneficiary left his job with the petitioner, and no one has claimed that the beneficiary intends to return, or that the petitioner intends to re-hire him. Instead, the beneficiary has found a new position with a different employer. Therefore, the petitioner’s 2003 job offer appears no longer to exist, which would eliminate any justification for approving that petition. If the beneficiary seeks to work for . . . any other employer, a new petition must reflect that new job offer.

The AAO cited the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(g)(2), which reads, in part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. . . . In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service.

The AAO concluded:

If the petitioner intends to show that the job offer remains valid, then the petitioner must show that it has consistently been able to pay the beneficiary his intended compensation from the petition’s 2003 filing date onward. In this context, it is significant that Ghulam Farooqui told a USCIS officer that the beneficiary’s employment ended because the petitioner could not “support a second imam.”

On May 5, 2011, the director issued a notice of intent to revoke the approval of the petition, citing the concerns that AAO had raised regarding the continued existence of the job offer and the petitioner’s ability to compensate the beneficiary. In response, [REDACTED] stated:

[The beneficiary] worked for our organization as an Imam from November 1999 until late 2006, at which point [the beneficiary] informed us that he received an offer to work for [REDACTED] for \$2000 per month. At that time, there was not enough membership to support the higher salary. However, we have always been able to pay \$1000 per month. Recently, we have experienced new growth in our membership, and as such, it is our intention not only to continue to offer [the beneficiary] the permanent position of religious minister with our organization, but also to increase his salary above the \$1000 we originally offered.

The petitioner submitted copies of bank statements, showing the following balances:

| | |
|-------------------|--------------|
| December 31, 2003 | \$488,700.99 |
| December 31, 2004 | 222,995.40 |
| December 31, 2005 | 88,689.66 |
| December 31, 2006 | 204,064.48 |
| October 31, 2007 | 198,434.39 |
| December 31, 2008 | 84,011.14 |
| November 30, 2009 | \$247,028.62 |

All of the above figures relate to the balance in the petitioner's building fund, and therefore represent funds dedicated to a purpose other than salaries. Other bank statements show the following information:

| Statement date | Account type | End-of-month Balance |
|-------------------|---------------------------|----------------------|
| December 31, 2008 | Commercial Checking | \$76,094.55 |
| December 31, 2008 | Streamlined Checking | 100,000.00 |
| November 30, 2009 | Streamlined Checking | 29,990.00 |
| December 31, 2010 | Commercial Checking | 133,473.04 |
| December 31, 2010 | Reality Business Checking | 291,735.67 |
| April 29, 2011 | Commercial Checking | 140,159.66 |

Letters from [REDACTED] indicated that the petitioner's three bank accounts had the following balances as of May 25, 2011:

| | |
|------------------|--------------|
| Building Fund | \$260,287.46 |
| Baitumal | 15,665.24 |
| [no designation] | 11,020.91 |

The three most recent bank documents, from [REDACTED] indicate that the vast majority of the petitioner's cash is allotted to the building fund.

More significantly, the AAO had indicated, in its January 2011 remand order, that the USCIS regulation at 8 C.F.R. § 204.5(g)(2) applies to the present petition, because the petition was no longer pending when USCIS published revised regulations on November 26, 2008. That regulation, which the AAO quoted in full in the remand order, required that evidence of ability to pay the proffered wage "shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements." The regulation allows for other forms of documentation, such as bank records, but only as a supplement – not a substitute – for the required types of evidence.

The USCIS regulation at 8 C.F.R. § 103.2(b)(2)(i) states:

The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

In this instance, the required primary evidence consists of copies of annual reports, federal tax returns, or audited financial statements. The petitioner failed to account for the absence of this documentation, instead submitting bank statements without comment.

On November 4, 2011, the director issued a second notice of intent to revoke the approval of the petition, again instructing the petitioner to submit documentation of the petitioner's ability to pay the beneficiary's salary from 2003 to the present. The director quoted ██████████ May 2007 assertion that "there wasn't enough membership to support a second imam." The director also cited other concerns regarding the beneficiary's ministerial credentials and prior employment.

In response to the notice, attorney ██████████ observed that the AAO had stated that the job offer and the petitioner's ability to compensate the beneficiary were the only issues requiring resolution. With respect to those matters, the petitioner submitted copies of IRS Forms W-2 showing that the petitioner paid the beneficiary \$1,000 per month from 2001 to 2006, and "Financial Reports" for 2006-2008 and a "Balance Sheet" for 2009, showing the following year-end balances:

| Fund Types: | Operating | Bait-Ul-Mal | Reserve | Building | Total |
|----------------|-----------|-------------|-----------|-----------|-----------|
| 2006 | \$891 | \$45,605 | \$127,651 | \$204,064 | \$378,211 |
| 2007 | 11,091 | 93,592 | 105,556 | 200,221 | 455,461 |
| 2008 | 76,095 | 20,456 | 200,000 | 84,011 | 380,563 |
| 2009 (rounded) | 7,451 | 26,794 | 114,948 | 229,718 | 378,910 |

Bank statements from five separate accounts showed the following balances as of October 31, 2011:

| | |
|---------------------------------|--------------|
| ██████████ Building Fund | \$197,662.77 |
| ██████████ Baitulmal | 33,374.39 |
| ██████████ Business Basic | 4,945.61 |
| ██████████ Streamlined Checking | 29,990.00 |
| ██████████ ██████████ Checking | 151,172.60 |
| Total: | 417,145.37 |

In new letters, each dated November 28, 2011, [REDACTED] (the petitioner's director) and [REDACTED] (the petitioner's vice president) each affirmed that the petitioner still intends to employ the beneficiary as a full-time imam. [REDACTED] stated:

[The beneficiary] continued to work for our organization until late 2006, at which point he informed us that he received an offer to work for [REDACTED] for a higher salary of \$2,000 per month. At that time, there was not enough membership to support a salary higher than the proffered wage of \$1,000 per month; and as such, [the beneficiary] stopped working for our organization at that time. However, it was always our understanding that [the beneficiary] would resume employment with our organization as an imam on a full time basis upon the granting of his green card. . . .

According to the Immigration Service, [REDACTED] provided a statement to a USCIS officer during a May 2007 site visit, claiming that [the beneficiary] left our organization because there was not enough membership to support a second imam. I did not make this statement and this statement is not true. Rather, I informed the inspecting officer that [the beneficiary] left our organization because we could not offer [the beneficiary] a salary higher than the proffered wage of \$1,000 based on our membership at the time.

[REDACTED] asserted that the petitioner intended "to increase [the beneficiary's] salary above the \$1,000 per month" in the original job offer. [REDACTED] made a similar claim on September 22, 2003, stating: "We expect to raise his annual salary over the next year and provide him with assistance for his housing." The record shows that the petitioner did not, in fact, raise the beneficiary's salary in 2004, 2005 or 2006, and the record is devoid of evidence that the petitioner ever provided "assistance for [the beneficiary's] housing" over and above his monthly salary. [REDACTED] did not explain why his latest claim of a forthcoming salary increase is any more credible than his previous claim that the petitioner would receive a raise in 2004.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 591. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92.

The director issued a new notice of revocation on December 12, 2011, stating that the petitioner failed to submit evidence regarding the beneficiary's recent employment, or "to establish that the position offered is intended as permanent employment." The director noted that the petitioner had provided two different reasons for the beneficiary's departure, and failed to document the claimed growth in its congregation that would supposedly warrant rehiring the beneficiary.

In response to the director's certified decision, counsel refers to [REDACTED] November 28, 2011 letter and states:

[REDACTED] clarified that he never informed the Service's investigating officer that [the beneficiary] stopped working at the [petitioning mosque] because it did not have enough membership to support a second imam; rather, he informed the inspecting officer that [the beneficiary] left the organization because it could not offer him a salary higher than the proffered wage of \$1,000.

This explanation conflicts with what the inspecting officer reported. It is, therefore, important to determine whether [REDACTED] claims from late 2011 are credible. The inspecting officer's notes read, in pertinent part:

[REDACTED] stated that [the beneficiary's] position was new – Assistant [REDACTED]. He was paid \$1000 per month but left in December 2006 and is working in a mosque [REDACTED]. He didn't know which mosque. . . . [REDACTED] stated that [the beneficiary] left because there wasn't enough membership to support having a second Imam.

The officer also reported meeting [REDACTED] – current Imam” during the inspection.

The officer's version of events did not emphasize the amount of the beneficiary's salary. Rather, the size of the congregation did not warrant the continued employment of the beneficiary as “Assistant Imam” in addition to [REDACTED].

In his November 2011 letter, [REDACTED] disputed the officer's report, stating that the beneficiary “informed us that he received an offer to work for [REDACTED] for \$2000 per month. At that time, there was not enough membership to support the higher salary.” The inspecting officer reported, only months after the beneficiary's departure, that [REDACTED] “didn't know which mosque” had become the beneficiary's new employer. This directly contradicts [REDACTED] claim, several years after the fact, that the beneficiary had informed the petitioner of the “offer to work for [REDACTED].”

Furthermore, according to the petitioner's own figures, the petitioner had \$378,211 in cash reserves at the end of 2006, a time when [REDACTED] now claims “there was not enough membership to support a salary higher than the proffered wage of \$1,000 per month.” The most recent annual total, from 2009, was \$378,910, which exceeds the 2006 total by only \$699 – less than one fifth of one percent. The increase is so small that, even with minimal inflation, the 2009 figure would have less buying power than the 2006 figure. The petitioner did not explain how this minimal change in circumstances permits the petitioner to raise the beneficiary's salary now, but not in 2006.

The petitioner relies on two apparently contradictory claims: The petitioner had hundreds of thousands of dollars in the bank, so it was clearly able to compensate the beneficiary; but at the same

time, it could not afford to pay him more than \$12,000 a year. Because the petitioner submitted only bank statements and summary balance sheets, rather than the comprehensive financial documentation required by the USCIS regulation at 8 C.F.R. § 204.5(g)(2), the petitioner has provided an incomplete financial picture that offers no explanation as to why a six-figure surplus was supposedly not sufficient to cover a salary raise to match [REDACTED]

In light of the above factors, the AAO finds the inspecting officer's contemporaneous report to be more credible than [REDACTED] attempted revision from four and a half years later. According to that report, "there wasn't enough membership to support having a second Imam." This information indicates that the job offer ceased to exist in late 2006. Several officials of the petitioning mosque have recently asserted that the petitioner still intends to employ the beneficiary, but these assertions amount, in effect, to a new job offer rather than a continuation of the 2003 job offer that formed the original basis for 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.

ORDER: The director's decision to revoke the approval of the petition is affirmed.