

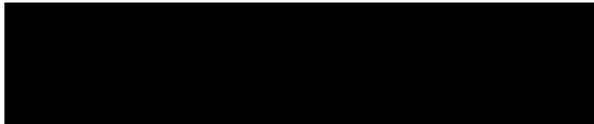
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: **JAN 19 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:



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, 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 Sunni Islamic mosque, formerly named the Islamic Service Foundation of New York. 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 (minister). The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits a statement from counsel, copies of pay receipts, and other documents.

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 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 petition was filed on August 31, 2009. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work throughout the two years immediately prior to that date.

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

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 [Internal Revenue Service] 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.

The beneficiary entered the United States on September 11, 2007, less than two years before the petition's filing date. Therefore, the petitioner must establish the beneficiary's qualifying employment abroad in late August and early September of 2007, and the beneficiary's subsequent lawful employment in the United States.

On the Form I-360 petition, asked whether the beneficiary had "ever worked in the U.S. without permission," the petitioner answered "no." The petitioner also answered "no" when asked if a Form I-485 application for adjustment of status accompanied the petition, but the record shows the simultaneous filing of Form I-485 on August 31, 2009. The same attorney of record prepared both Form I-360 and Form I-485, and the record (including counsel's cover letter, which refers to both forms) indicates that both forms were submitted at the same time, in the same envelope.

Section 204(b) of the Act, 8 U.S.C. § 1154(b), provides for the approval of immigrant petitions only upon a determination that "the facts stated in the petition are true." USCIS may therefore reject claims of fact that it does not find to be credible, or that the petitioner has not shown to be true.

Counsel prepared both forms at the same time, and therefore could not have believed that no adjustment application accompanied the petition. Nevertheless, even though the Form I-360 contained information that counsel must have known was incorrect, counsel signed the instant petition to indicate that the information on the form was "based on all information of which I have knowledge." The AAO notes that willfully misleading, misinforming or deceiving any person concerning any material and relevant matter relating to a case may be a basis for disciplinary sanctions under 8 C.F.R. § 1003.102(c). In addition, such actions may constitute frivolous

behavior. *See* 8 C.F.R. § 1003.102(j). The AAO must express its deep concern and strongly discourage this behavior.

In an August 28, 2009 letter accompanying the initial filing, [REDACTED], president of the petitioning entity, stated:

[The beneficiary] has served in the capacity of Imam at various mosques since 1991, the last three of which have been in the United States. . . . [The beneficiary] had served at our mosque from September to November of 2007 as an Imam before serving as an Imam for our sister Islamic [S]ociety of Bay Ridge.

[REDACTED] did not identify any of the beneficiary's claimed employers outside the United States. The petitioner did not submit any IRS documentation of the beneficiary's prior compensation, nor did the petitioner explain the absence of such documentation. Likewise, the petitioner failed to submit comparable evidence of the beneficiary's employment abroad during the earliest weeks of the qualifying period.

The beneficiary's concurrently filed adjustment application included Form G-325, Biographic Information. Instructed to list his employment over the "last five years," *i.e.*, from August 2004 to August 2009, the beneficiary stated that he worked for the petitioner from September 2007 to November 2007; the Islamic Society of Bayridge [*sic*] from November 2007 to August 2009; and for the petitioner from August 2009 onward. The petitioner listed no employment prior to September 2007. The beneficiary left blank a separate line, where he had been instructed to identify his "last occupation abroad." Thus, on this form, which the beneficiary signed under penalty of perjury, the beneficiary twice failed to claim any past employment outside the United States.

The director denied the petition on March 4, 2010, stating:

The beneficiary was issued an R-1 visa by the U.S. Embassy in Cairo, Egypt to work for [the petitioner]. The beneficiary entered the United States using the aforementioned visa on September 11, 2007. The petitioner has submitted no evidence to establish that the beneficiary has ever worked for the [petitioner]. However previous USCIS records show that the beneficiary is employed and paid by [REDACTED]

According to . . . USCIS records the beneficiary's employment with the Islamic Society of Bay Ridge began in January of 2008. The petitioner has not submitted evidence to establish that the beneficiary has ever been authorized to work for the [REDACTED]. . . . [Therefore,] the beneficiary's employment with this organization violated his R-1 status. The record indicates that the beneficiary has failed to maintain his previously accorded status since at least January of 2008 and as such has been out of lawful status as of January of 2008.

Unauthorized employment is a violation of the beneficiary[']s status and the beneficiary would not longer be maintaining his lawful immigrant status. As such . . . any [subsequent] period of employment by the beneficiary has not been in a lawful immigration status.

Therefore, the evidence is insufficient to establish that the beneficiary has been performing full-time work as a religious worker for at least the two-year period immediately preceding the filing of the petition in a lawful immigration status.

Under the USCIS regulation at 8 C.F.R. § 214.1(e), any unauthorized employment by a nonimmigrant constitutes a failure to maintain status. In addition, both the former regulation at 8 C.F.R. § 214.2(r)(6) and the revised regulation at 8 C.F.R. § 214.2(r)(13) specify that an R-1 nonimmigrant alien is not allowed to change employers without a new petition filed by the new employer, and that an unauthorized change of employer constitutes a failure to maintain status. Therefore, the beneficiary was never authorized to work for the Islamic Society of Bay Ridge, and by working there, he violated the terms of his R-1 status. From that point onward, the beneficiary was out of status.

On appeal, the petitioner submits photocopied pay receipts showing salary payments from the petitioner to the beneficiary. These receipts all date from 2010, and therefore they do not reflect employment during the 2007-2009 qualifying period. If anything, these receipts simply demonstrate that the petitioner keeps payroll records, which begs the question of why the petitioner has failed to produce comparable records from 2007-2009.

The petitioner submits a copy of an August 30, 2006 letter from [REDACTED], stating that the petitioner had invited the beneficiary "to participate in our religious program during the holly [sic] month of Ramadan." This letter predates the qualifying period, and it cannot serve as proof of any activity that took place after the letter was written.

In a new letter, [REDACTED], evidently [REDACTED] successor as president of the petitioning entity, claims that the beneficiary's "service to our mosque continued even during the period he had served at our sister organization, the Islamic Society of Bay Ridge." This contrasts with the beneficiary's own statements on Form G-325, on which he indicated that his employment with the petitioner ended in 2007 and resumed in 2009. 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. 582, 591 (BIA 1988). 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. False, contradictory, or unverifiable claims inherently prevent a finding that the petitioner's claims are true. See *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Systronics Corp. v. I.N.S.*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988).

letter not only fails to explain the total lack of payroll records from 2007-2009, it also fails to address the finding that the beneficiary violated his R-1 nonimmigrant status through his admitted employment at the Islamic Society of Bay Ridge.

Counsel observes that the beneficiary's September 11, 2007 entry into the United States was not the beneficiary's first entry. The petitioner submits documentation showing that the beneficiary previously entered the United States on October 3, 2006. This documentation still fails to establish lawful employment by the beneficiary during the first weeks of the qualifying period in August and September 2007. Also, the record does not indicate how long the beneficiary was outside the United States before his re-entry on September 11, 2007, or the nature of his activities during his time outside the United States.

Counsel, on appeal, does not deny that the beneficiary violated his status by working for the Islamic Society of Bay Ridge at a time when he was only authorized to work for the petitioner. Instead, counsel contends that the director's

conclusion is in utter contradiction to the Service[']s own rules and regulations as published in its news release . . . pursuant to the matter of Ruiz-Diaz (No. C07-1881RSL). In its release, USCIS states that individuals who file their I-360 petitions on or before August 31, 2009 "will receive protection from the accrual of unlawful presence and unauthorized employment that began either after the filing of the Form I-360 or Nov. 21, 2007, whichever is earlier.

Counsel refers to *Ruiz-Diaz v. United States*, No. C07-1881RSL (W.D. Wash. June 11, 2009), the principal result of which was to allow aliens to file Form I-485 adjustment applications concurrently with the filing of Form I-360 special immigrant religious worker petitions. The *Ruiz-Diaz* decision, which the Ninth Circuit Court of Appeals overturned in *Ruiz-Diaz v. USA*, No. 09-35734 (9th Cir. Aug. 20, 2010), tolled unlawful presence and unauthorized employment only in the limited context of aliens who attempted to file a Form I-485 adjustment application concurrently with a Form I-360, only to have USCIS reject the adjustment applications because the regulations made no provision for concurrent filing.

The petitioner, however, has not shown that the beneficiary qualifies for the retroactive relief described in *Ruiz-Diaz*. The relevant paragraphs of the district court's decision follow:

(3) Beneficiaries of petitions for special immigrant visas (Form I-360) whose Form I-485 and/or Form I-765 applications were rejected by defendants pursuant to 8 C.F.R. § 245.2(a)(2)(i)(B) and who reapply under paragraph (2) of this Order are entitled to have their applications processed as if they had been submitted on their original submission date. Any employment authorization that is granted shall be retroactive to the original submission date.

(4) For purposes of 8 U.S.C. § 1255(c) and § 1182(a)(9)(B), if a beneficiary of a petition for special immigrant visa (Form I-360) submits or has submitted an adjustment of status application (Form I-485) or employment authorization

application (Form I-765) in accordance with the preceding paragraphs, no period of time from the earlier of (a) the date the I-360 petition was filed on behalf of the individual or (b) November 21, 2007, through the date on which the United States Citizenship and Immigration Services (“CIS”) issues a final administrative decision denying the application(s) shall be counted as a period of time in which the applicant failed to maintain continuous lawful status, accrued unlawful presence, or engaged in unauthorized employment.

Id. at 2. The beneficiary filed Form I-485, concurrently with the petitioner’s filing of Form I-360, on August 31, 2009 – the last day USCIS would accept such filings under *Ruiz-Diaz*.

Paragraph (4) of the ruling waived a finding of unlawful employment “[f]or purposes of 8 U.S.C. § 1255(c) and § 1182(a)(9)(B).” The former statutory passage relates to adjustment of status; the latter passage relates to unlawful presence in the context of inadmissibility. The district court’s now-overruled *Ruiz-Diaz* ruling did not require USCIS to approve any special immigrant religious worker petitions filed under 8 U.S.C. § 1153(b)(4), or to overlook any unlawful, non-qualifying employment that the beneficiary engaged in prior to the filing of such a petition. The regulatory provisions requiring lawful, authorized employment were already in effect at the time of the district court’s *Ruiz-Diaz* decision, but the court did not disturb them. The now-defunct *Ruiz-Diaz* decision served a specific purpose: to remedy unlawful presence accrued while Form I-485 adjustment applications were pending. The beneficiary’s unauthorized work for the Islamic Society of Bay Ridge falls well outside the narrow scope of the district court’s ruling.

The petitioner has not contested that the beneficiary worked, in violation of status, for another employer for whom he had no authorization to work. This is a facially disqualifying fact, unaffected by counsel’s misplaced reliance on *Ruiz-Diaz*. In addition, while the beneficiary was authorized to work for the petitioner during the 2007-2009 qualifying period, the petitioner has failed to produce any of the required, contemporaneous evidence (such as IRS documentation of compensation) to show that the beneficiary actually did work for the petitioner during that time. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). For both of these independent reasons, the AAO affirms the director’s finding that the petitioner has not shown that the beneficiary performed continuous and lawful religious work during the two years 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, the AAO will dismiss the appeal.

ORDER: The appeal is dismissed.