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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: **MAY 16 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 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 with the field office or service center that originally decided your case by filing a 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 dismiss the appeal.

The petitioner is a Muslim 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 an imam. 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. The director additionally found that the petitioner had not established its ability to compensate the beneficiary.

On appeal, the petitioner submits a letter from the petitioner, a "Deposit Account Balance Summary" and checking account statements from Chase bank, notarized affidavits from [REDACTED] a letter from the [REDACTED] a brief from counsel, a copy of an untranslated article from Urdu Times, and photographs.

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 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 17, 2009. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work in lawful immigration 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.

In two letters submitted with the Form I-360 petition, the petitioner stated that the beneficiary has been working as an imam for the petitioner on a "voluntary basis" since June 2007. On the Form I-360 petition, the petitioner indicated that the beneficiary arrived in the United States on December 16, 2000 and the petitioner listed the beneficiary's current nonimmigrant status as "None." Service records do not indicate that the beneficiary held any lawful status in the United States that would have authorized him to work for the petitioner during the qualifying two-year period. Accordingly, any work performed by the beneficiary during that time is not considered qualifying prior experience under 8 C.F.R. § 204.5(m)(11).

On August 24, 2010, USCIS issued a Request for Evidence, in part requesting additional evidence regarding the beneficiary's work history. The notice instructed the petitioner to submit experience letters 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 as well as the beneficiary’s Internal Revenue Service (IRS) Forms W-2 and signed tax returns for the years 2007, 2008 and 2009. Additionally, the notice stated **“If any of the experience was gained while working in the United States provide evidence that the beneficiary was employed while in lawful status”** (emphasis in original).

In response to the notice, the petitioner submitted evidence that the beneficiary did volunteer work at two additional religious organizations during the two-year qualifying period immediately preceding the filing date of the petition. A letter from [REDACTED] stated that the beneficiary served as a “volunteer worker” for that organization from August 15, 2007 to September 14, 2008, and a letter from [REDACTED] stated that the beneficiary served as a “volunteer worker” for that organization from September 15, 2008 to September 14, 2009. Each of the letters provided a list of duties but failed to provide information regarding hours worked per week. The petitioner additionally resubmitted an “Experience Certificate” letter from the petitioning organization, originally submitted with the petition, indicating that the beneficiary had served as a volunteer imam since June 2007 without listing hours worked. In a letter responding to the notice from USCIS, former counsel for the petitioner stated the following:

With regards to the compensation the petitioner and the beneficiary represented to us that for the services of teaching Holy Quran to children, the parents of the children frequently donate money, which is the main source of compensation and subsistence of the beneficiary. Tax Returns for the years 2007, 2008 and 2009 are also attached....

As explained earlier the beneficiary’s primary source of income being donation there are no W-2 forms existing.

The petitioner submitted copies of the beneficiary’s Form 1040 tax returns, which indicated that the beneficiary received “business income” of \$5,192 in 2007, \$5,126 in 2008, and \$6,258 in 2009. The petitioner did not submit evidence in support of counsel’s assertion that the income reflected on the tax returns came from donations from parents of the beneficiary’s students. 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 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).

The petitioner did not respond to the instruction to provide evidence that the beneficiary maintained lawful status during his employment in the United States.

On February 7, 2011, the director denied the petition. In the decision, she noted that the beneficiary was not in lawful immigration status during the qualifying period and held no authorization to work

for the petitioner. The director additionally noted that the petitioner had not shown that the beneficiary was engaged in full-time, compensated religious work during the qualifying period. Therefore, the director determined that the petitioner had failed to establish that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition.

With regard to the beneficiary's immigration status, counsel for the petitioner makes conflicting statements on appeal. On the Form I-290B Notice of Appeal, counsel asserts that the beneficiary "was in R-1 status at the time of the filing of the I-360 petition." However, in a brief submitted in support of the appeal, counsel states the following:

The [REDACTED] was initially granted R-1 Nonimmigrant status as a religious worker for a prior Islamic organization, [REDACTED] in August of 2001, which was extended for the same organization from August of 2003 through August of 2005.

An extension of R-1 status was apparently filed by the current petitioner, [REDACTED] and [REDACTED] in 2006 and subsequently denied in December of 2006. Apparently, a copy of that denial was not received by the petitioner until June of 2009.

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). As the petitioner has submitted no evidence to establish that the beneficiary held lawful status or work authorization during the qualifying period, any work performed during that period is not considered qualifying under 8 C.F.R. § 204.5(m)(4) and (11).

On appeal, counsel for the petitioner also argues that the petitioner is not required to establish that the beneficiary was engaged in compensated employment during the qualifying period. In his brief, counsel states:

The denial seems to place unnecessary and inappropriate importance on the inability of the beneficiary to produce tax returns or other proof of paid employment as Imam. In *Soltane v. DOJ*, 381 F.3d 143 (3d Cir. 2004) the Circuit Court of Appeals held that paid compensation for a religious work is not required by either the statute or the regulations. Nevertheless, the beneficiary did receive compensation both in the form of room and board as provided by the petitioner and in the form of "contributions" provided by members of the congregation for religious education. Although it may be true that this compensation was provided directly by the congregant to the beneficiary rather than indirectly through the petitioner religious organization, there should be little doubt that the intent was the same- to have the congregation compensate the beneficiary for performing religious services.

The AAO notes that on November 26, 2008, as required under section 2(b)(1) of the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391, 122 Stat. 4193 (2008), USCIS published new regulations for special immigrant religious worker petitions. Therefore, the 2004 court decision cited by counsel interpreting the regulations in effect at that time is not relevant to this discussion.

The current regulation at 8 C.F.R. § 204.5(m)(11) requires compensated employment. The petitioner must submit evidence of prior 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 the beneficiary participated in such a program, and has offered no evidence that the beneficiary provided for his own support. The petitioner has submitted conflicting evidence regarding the issue of the beneficiary's compensation. The petitioner asserted at the time of filing and in response to the Request for Evidence that the beneficiary worked as a volunteer. On appeal, counsel asserts that the beneficiary received compensation from the petitioner in the form of room and board, and that he received donations which constituted compensation from the congregation.

Regarding the petitioner's claim that the beneficiary's volunteer work within the United States is qualifying experience, any work performed by the beneficiary as a volunteer is not qualifying. 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). Accordingly, any time the beneficiary may have spent in the United States "working" as a volunteer for the petitioner cannot be considered qualifying employment.

On appeal, counsel asserts that the beneficiary was engaged in compensated employment. The AAO finds that the petitioner has not submitted sufficient evidence to establish that the beneficiary's religious work was compensated. As discussed above, the petitioner did not submit any evidence beyond the assertions of counsel regarding the source of the beneficiary's income as reflected on his tax returns. Further, although counsel asserts on appeal that the petitioner provided the beneficiary with room and board during the two years immediately preceding the filing date of the petition, the petitioner has not submitted evidence of this purported non-salaried compensation as required under 8 C.F.R. § 204.5(m)(11).

Regardless, the issue of whether or not the beneficiary was compensated has no effect on the beneficiary's lack of lawful immigration status during the two-year qualifying period. 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.

The second issue to be discussed is whether the petitioner has established how it intends to compensate the beneficiary.

The 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 and in an accompanying letter, the petitioner indicated that it intended to provide the beneficiary with a salary of \$24,000 per year in addition to room and board at “our ‘Hugra’ (residence of Priests) attached to our Mosque.” As evidence regarding its finances, the petitioner submitted a copy of a checking account statement for the period of May 30, 2009 to June 30, 2009, showing a purported ending balance of \$19,586.

In the Request for Evidence, issued on August 24, 2010, USCIS instructed the petitioner to submit evidence of its ability to compensate the beneficiary in accordance with the regulation at 8 C.F.R. § 204.5(m)(10). The notice also requested a copy of the petitioner’s lease agreement, if applicable, and “a letter from the owner or property management company which confirms that the petitioner is actually occupying and currently maintaining the lease agreement” as well as evidence to establish who actually owns the property that is being leased.

In its response to the notice, the petitioner did not submit any documentary evidence regarding its ability to compensate the beneficiary and did not address the issue at all beyond former counsel’s statements regarding the beneficiary’s voluntary work and his receipt of donations from the parents of his students. In response to the request for a lease agreement, the petitioner submitted a letter from the petitioner stating that the owner of the building, [REDACTED] [REDACTED] donated the first floor of the building to the mosque “in a meeting held in December 2003.” The petitioner additionally submitted a document dated January 7, 2003, entitled “Minutes of the Executive Committee meeting,” stating, in pertinent part:

The Committee members were happy on [REDACTED]’s decision to donate the 1st floor to the [REDACTED] said starting from 1st January 2003 he will not get the rent from the Community. Instead, he will prefer to get utility charges only. The Committee members unanimously decided to pay \$800/- per month as water, gas and electricity charges to [REDACTED]

The petitioner also submitted three paystubs indicating payments to [REDACTED] for “utility and other charges.”

In the decision denying the petition, the director found that the petitioner “has not submitted sufficient evidence it has the means to compensate the beneficiary a wage of \$24,000 per year,” and also found that “the petitioner did not provide evidence that they have been providing or would be able to provide food and accommodations for the beneficiary.

On appeal, counsel states:

Unlike for profit commercial corporations that have a fiduciary responsibility to its shareholders to maximize profit, a religious organization has no such responsibility. It raises funds entirely through the donations of its congregation to whom it is responsible. The tax returns are therefore not the best guide in determining the employer’s ability to pay.

The petitioner submits a “Deposit Account Balance Summary” and additional checking account statements from Chase bank on appeal. Counsel asserts that this evidence establishes the petitioner’s ability to pay the beneficiary’s proffered salary of \$24,000 per year. Counsel does not, however, provide any further evidence regarding the petitioner’s claim that it would also provide “food and accommodations.”

Therefore, the AAO agrees with the director’s determination that the petitioner failed to submit sufficient evidence of its ability to provide the claimed salaried and non-salaried compensation to the beneficiary as proffered.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.