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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 24 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 petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO subsequently remanded the petition to the director for a new decision based on revised regulations. The director determined that the petitioner had failed to submit required evidence, and therefore the director again denied the petition and certified the decision to the AAO. The AAO will affirm the director's decision.

The petitioner is a Sunni Islamic 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 submitted information required on an employer attestation, and that the petitioner had failed to submit required evidence regarding the beneficiary's past work experience and compensation.

The petitioner filed the Form I-360 petition on May 1, 2006. While the petition was pending, U.S. Citizenship and Immigration Services (USCIS) published new regulations for special immigrant religious worker petitions. Supplementary information published with the new rule specified: "All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule. If documentation is required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). Thus, the new regulations apply to the present petition.

The petitioner filed the Form I-360 petition on May 1, 2006. The director originally denied the petition on November 16, 2009. The director based that decision on the old, obsolete version of the regulations. The petitioner appealed that decision, and the AAO remanded the petition on April 9, 2010, for a new decision based on the proper regulations. Because the AAO withdrew the director's 2009 decision, there is no need to discuss that decision here in detail.

Subsequently, the director issued a new denial on January 10, 2012, but did not certify the decision to the AAO as instructed in the remand notice. Therefore, the director reopened the matter and certified the denial to the AAO on March 16, 2012. The USCIS regulation at 8 C.F.R. § 103.4(a)(2) indicates that the petitioner may submit a brief within 30 days after the director serves notice of a certified decision. The permitted time period has elapsed, and the AAO has received no response to the certified denial. The AAO therefore considers the record to be 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;

(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).

ATTESTATION ISSUES

Three of the director's five cited grounds for denial concern elements of the employer attestation. The USCIS regulation at 8 C.F.R. § 204.5(m)(7) requires the petitioner to submit a detailed employer attestation, containing information about the employer, the beneficiary, and the job offer. Any information submitted is subject to verification under the regulation at 8 C.F.R. § 204.5(m)(12). On August 11, 2010, the director issued a request for evidence (RFE), instructing the petitioner to submit the required attestation and other required evidence. On April 21, 2011, the director issued a second RFE, instructing the petitioner to clarify issues regarding its response to the 2010 RFE.

The AAO notes that, in response to this second RFE, counsel disputed several points raised by the director in the 2009 denial notice. The AAO withdrew that denial, which was therefore no longer in effect in 2011 when counsel prepared the RFE response. Counsel also contested the rejection of a Form I-485 adjustment application, an issue outside the scope of the present proceeding.

The first issue under consideration regards the regulation at 8 C.F.R. § 204.5(m)(7)(viii), which requires the employer to attest to the specific location(s) of the proposed employment. In the attestation, the petitioner indicated that the beneficiary would work at the petitioning entity's address at 820 Java Street, Inglewood, California.

In the 2011 RFE, the director instructed the petitioner to "[s]ubmit documentary evidence to prove religious activity . . . including lease agreements; an occupancy permit and letter from the local fire department, establishing the building's capacity; a current membership directory to establish the size of the congregation; insurance documentation; an organizational chart for all paid employees; and a floor plan of the structure.

In response, the petitioner submitted copies of the petitioner's non-profit incorporation documents, insurance documents (showing the premises to be insured as a "church") and advertisements for religious activities. Counsel noted that the petitioner had previously submitted outdoor and indoor photographs of the building, documentation of the petitioner's active corporate and tax-exempt

status, and public directory listings identifying the property as a mosque. Counsel stated that the director's request was "overly broad and intrusive," and that the evidence submitted "proves beyond any reasonable doubt that the Petitioner exists and is in fact a functioning, legitimate religious organization."

The director denied the petition in part because the "petitioner failed to submit [much of the requested] documentation and USCIS cannot determine the location of beneficiary's proposed employment."

The AAO will withdraw this particular finding by the director. The director did not merely find that the petitioner had impeded the director's ability to verify the petitioner's claims. Rather, the director found that "USCIS cannot determine the location of beneficiary's proposed employment." This finding is untenable, as the petitioner has consistently provided the same street address and submitted exterior photographs of the structure. The director failed to explain why "USCIS cannot determine the location of beneficiary's proposed employment" without "zoning information," a "floor plan," and other such documentation.

The petitioner attested to the location of the proposed employment, as required. The record contains credible and consistent evidence that the facility at that address is a tax-exempt organization, publicized as the location of a house of worship. Photographs of the outside and inside of the structure are consistent with the characteristics of a mosque. The director did not explain why this evidence was insufficient or lacked credibility in the absence of the other requested documents (none of which appear in the language of the regulations). There is no evidence that USCIS officers conducted or attempted to conduct a site inspection of the property at 820 Java Street, much less that such an inspection yielded any evidence that there is no mosque at that site.

Furthermore, the director had requested "zoning information" only in the event that "the location is a single-family dwelling." The petitioner never claimed that to be the case, and the photographs do not appear to show "a single-family dwelling." The absence of "zoning information," therefore, is not the disqualifying factor that the director portrayed it to be.

The AAO notes that some insurance documentation shows the address as "820 S Java Avenue" rather than "820 Java Street," but this use of terminology is not a major discrepancy that throws the petitioner's other evidence into doubt. In any case, the director did not cite that discrepancy as a factor in the denial notice. Review of an official map of Inglewood¹ shows that there is only one road with the name "Java," and it is one block long. The terms "S Java Avenue" and "Java Street" refer to the same street, with no realistic possibility of confusion.

The director cannot base the denial of this petition upon serious allegations without supporting evidence. Just as the unproven assertions of counsel are not evidence, neither are the unsupported conclusions of the director. *Cf. Matter of Obaigbena*, 19 I&N Dec. 533, 534 note (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The director failed to explain how the petitioner's evidence left any doubt as to the location of the beneficiary's intended employment.

¹ http://www.cityofinglewood.org/pdfs/depts/pw/gis/map_room/base/2006grid.pdf, excerpt added to record May 2, 2012.

The AAO finds that the petitioner has submitted sufficient documentation to show, by a preponderance of evidence, that the entity at 820 Java Street is a *bona fide* mosque, and that the petitioner has satisfactorily identified the location of the proposed employment.

With respect to the second ground for denial, the USCIS regulation at 8 C.F.R. § 204.5(m)(7)(iii) requires the employer to attest to the number of employees who work at the same location where the beneficiary will be employed and a summary of the type of responsibilities of those employees. USCIS may request a list of all employees, their titles, and a brief description of their duties at its discretion.

In the employer attestation, the petitioner stated that five employees work at the same location where the beneficiary will be employed. When instructed to list them, the petitioner listed a groundskeeper, two teachers and an imam, providing brief summaries of the duties of each. Ahmed Bholat, general secretary of the petitioning entity, signed an accompanying letter indicating that the beneficiary “serves the English speaking congregants,” while a second imam “serves the non-English speaking congregants of the community.”

In the 2011 RFE, the director stated that the attestation “does not include specific information regarding these five employees.” The director instructed the petitioner to provide the names and other details of its five claimed employees, supported by documentary evidence including Internal Revenue Service (IRS) Form W-2 Wage and Tax Statements issued to “all employees identified in the employer attestation.”

The petitioner’s response to the 2011 RFE did not include the requested evidence about the petitioner’s employees. Counsel’s accompanying cover letter did not even acknowledge that element of the RFE. The director cited this omission in the un rebutted denial notice.

The regulatory language at 8 C.F.R. § 204.5(m)(7)(iii) plainly gives the director discretion to “request a list of all employees” as well as “their titles,” meaning that a list of titles alone (which the petitioner provided) cannot suffice. The petitioner, therefore, failed to provide required evidence upon request, which is grounds for denial under 8 C.F.R. § 103.2(b)(14). The AAO affirms the director’s finding that the petitioner failed to provide requested evidence regarding its claimed employees.

The third ground for denial relates to two related requirements, requiring the prospective employer to attest to the number of aliens holding special immigrant or nonimmigrant religious worker status currently employed or employed within the past five years by the prospective employer’s organization (8 C.F.R. § 204.5(m)(7)(iv)) and the number of special immigrant religious worker and nonimmigrant religious worker petitions and applications filed by or on behalf of any aliens for employment by the prospective employer in the past five years (8 C.F.R. § 204.5(m)(7)(v)).

On the employer attestation, the petitioner indicated that had filed one petition in the past five years, and had employed one nonimmigrant or special immigrant religious worker during that time. In the 2011 RFE, the director instructed the petitioner to “[i]ndicate whether this employee is the beneficiary in the instant petition” or, otherwise, to identify the alien and provide supporting documentation. The petitioner, in response, did not acknowledge or address the director’s request

for clarification on that point. The director cited the above omission as a ground for denial in the 2012 decision.

Review of the employer attestation leads the AAO to conclude that the beneficiary is the one alien (and the beneficiary of the one petition) mentioned on the attestation. When called upon to list its total number of employees, the petitioner answered "5," and indicated that there were four other employees (a second imam, a groundskeeper and two teachers). The beneficiary was clearly one of the five employees specified. It is reasonable, therefore, to conclude that the petitioner also counted the beneficiary on the very next line of the attestation, concerning the number of nonimmigrants and immigrants the petitioner has recently employed, as well as the line after that, concerning the number of petitions filed. In this respect at least, the record shows no effort by the petitioner to mislead or conceal evidence from the director. The director cited no evidence that the petitioner employed other aliens and/or filed other petitions, but failed to disclose these facts on the attestation.

Furthermore, the attestation requires only that the petitioner state the number of immigrants/nonimmigrants employed and the number of petitions filed. There is no direct regulatory requirement for the petitioner to identify the individuals. Such identification may come into play as part of wider verification efforts, but in the present instance, the petitioner claimed only one such worker, while specifying that the beneficiary himself held R-1 nonimmigrant status during the preceding five years (and otherwise counting the beneficiary when counting workers). The AAO will therefore withdraw the director's finding that the petitioner failed to provide sufficient information about other petitions and aliens.

PAST EMPLOYMENT

The fourth issue concerns evidence of the beneficiary's prior employment. The 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 USCIS regulation at 8 C.F.R. § 204.5(m)(11) reads, in pertinent part:

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.

The relevant two-year period immediately preceded the filing of the petition on May 1, 2006.

Prior to the initial denial of the petition, the petitioner had submitted copies of IRS Form 1099-MISC Miscellaneous Income statements, showing that the petitioner paid the beneficiary \$20,416.67 in 2004 and \$30,000 in 2005. Copies of the beneficiary's income tax returns for those two years showed corresponding amounts.

In the 2010 RFE, the director requested copies of the beneficiary's tax and payroll documentation from 2004 onward. In response, the petitioner submitted copies of IRS Forms 1099 for 2005-2007 and copies of the beneficiary's federal income tax returns for 2005-2008, indicating that the beneficiary earned \$30,000 in 2005, \$23,950 in 2006, \$22,000 in 2007 and \$22,250 in 2008. The beneficiary reported this income as wages and salaries, rather than as business income.

The director, in the 2011 RFE, noted that the petitioner had not submitted the requested payroll records. The director requested the beneficiary's IRS-certified federal tax records, and an itemized record from the Social Security Administration (SSA). The director also noted that the petitioner reported payments to the beneficiary as nonemployee compensation on IRS Forms 1099-MISC, rather than as wages or salaries on IRS Forms W-2. The director observed that professional preparers prepared the beneficiary's income tax returns, but misreported the beneficiary's compensation as wages and salaries rather than as business income as is standard practice with Forms 1099-MISC. The director instructed the petitioner to submit "a letter from the petitioner indicating why the beneficiary received a Form 1099 rather than a W-2," as well as "a letter from [the] tax preparers that explains why the beneficiary reported [his] earnings" as salary rather than as business income.

In response, counsel claimed that the response to the 2011 RFE included the "Beneficiary's Social Security Card Record," but the AAO can find no such documentation in the record. With respect to the beneficiary's tax returns, counsel stated: "Any discrepancy in regards to where income was listed on the Tax Returns is not a basis for denial. . . . Petitioner's practice is to pay employees via 1099."

The AAO agrees with counsel that poor preparation of the tax returns is not, by itself, a disqualifying factor. The relevant issue here is one of credibility and corroboration. 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.

The petitioner did not submit the competent objective evidence that the director had requested - specifically the requested IRS-certified tax returns that the regulation at 8 C.F.R. § 204.5(m)(11)(i) empowers the director to request. The petitioner has submitted only uncertified copies. The record, therefore, does not establish that the returns submitted match those that the IRS ultimately accepted for processing. The petitioner's failure to provide IRS-certified tax documents, required by the above-cited regulation, is grounds for denial of the petition.

Likewise, the director requested SSA documentation to shed further light on the issue of the beneficiary's prior compensation. The record does not support counsel's claim that the petitioner

has submitted that evidence. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. 8 C.F.R. § 103.2(b)(14).

The director found that the petitioner failed to submit requested evidence relating to the beneficiary's past employment. The AAO will affirm that finding. The director also raised concerns about the amounts of the beneficiary's claimed compensation, which the AAO will address below.

COMPENSATION

The fifth and final stated ground for denial concerns the USCIS regulation at 8 C.F.R. § 204.5(m)(10), which reads:

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.

The August 26, 2003 agreement between the petitioner and the beneficiary indicated that the petitioner would pay the beneficiary \$2,200 per month, and "provide a two-bedroom house," "[m]edical insurance for the entire family" and "passage in and out of [the] United States." The following year, the petitioner executed a new contract, valid from March 1, 2004 to May 26, 2007, indicating that the petitioner would pay the beneficiary \$2,500 per month and up to \$200 per month towards medical insurance.

Under the terms of the 2004-2007 contract, the petitioner should have paid the beneficiary \$2,500 per month, or \$30,000 per year, every year from 2004 onward. The IRS materials in the record, however, indicate that the beneficiary received that amount only in 2005, and received as little as \$22,000 in later years.

The director, in the 2011 RFE, observed that "the beneficiary was paid the full salary" for "only one year (2005)," and has not explained why the beneficiary received lower amounts in other years. The director also instructed the petitioner to submit evidence of the non-salaried compensation specified in the employment agreement and contract, such as health insurance coverage, payment for the beneficiary's travel to and from the United States, and the "two-bedroom house" mentioned in 2003.

The petitioner's response included no evidence regarding non-salaried compensation, and no explanation for the fluctuations in the beneficiary's salary well below the agreed amount. Counsel asserted that the regulation at 8 C.F.R. § 204.5(g)(2) only requires the petitioner to document its ability to pay the full wage, not to have actually done so in the past. The director, however, did not cite 8 C.F.R. § 204.5(g)(2) in the 2011 RFE. The regulation at 8 C.F.R. § 204.5(m)(10) requires verifiable evidence relating to salaried and non-salaried compensation, and the regulation at 8 C.F.R.

§ 204.5(m)(11)(ii) requires the petitioner to establish that the beneficiary received non-salaried compensation where applicable (as it clearly is here). The petitioner did not merely claim that it would pay the beneficiary \$30,000 per year plus housing, insurance, and other benefits upon approval of the petition. The petitioner specifically executed an agreement with the beneficiary to provide these benefits between 2003 and 2007. The petitioner's failure to abide by those terms necessarily reflects on the credibility of any claims regarding future compensation. Either the beneficiary worked on a less than full-time basis, despite the agreement that he would work full-time; or the petitioner was unable to compensate him at the full level; or the petitioner simply declined to pay him the agreed amount, despite its contractual obligations. None of these alternatives is conducive to approval of the petition.

The AAO notes that all of the beneficiary's submitted tax returns, from 2004 to 2008, include an apartment number in the beneficiary's residential address. There is no evidence that the petitioner ever "provide[d] a two-bedroom house" to the petitioner and his family. The petitioner ignored the director's request to submit evidence to prove that the petitioner owns or rents such a house.

The AAO will affirm the director's finding that the petitioner failed to provide relevant, material evidence relating to the beneficiary's compensation. As noted previously, the AAO will also affirm the director's finding that the petitioner failed to provide required information about its employees.

The AAO will affirm the certified decision 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. The petitioner has not met that burden.

ORDER: The director's decision of March 16, 2012 is affirmed. The petition is denied.