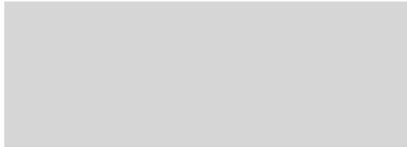




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **MAY 12 2015** 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg   
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, initially approved the employment-based immigrant visa petition on April 29, 2002. On further review, the Director, California Service Center, (the director) determined that the beneficiary was not eligible for the visa preference classification. Accordingly, the director served the petitioner with a Notice of Intent to Revoke (NOIR) the approval of the visa petition stating the reasons therefor and subsequently exercised her discretion to revoke the approval of the petition on January 14, 2013. The matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner is a mosque and religious school. 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. In the NOIR, issued on November 1, 2012, the director found that the petitioner had not established that the beneficiary had the requisite two years of qualifying work experience immediately preceding the filing of the petition. The director afforded the petitioner 30 days to offer evidence in support of the petition and in opposition to the proposed revocation. In the final decision, the director noted that the petitioner had not responded to the NOIR.

On appeal, the petitioner submits a letter and additional evidence.

Section 205 of the Act, 8 U.S.C. § 1155, states that the Secretary of the Department 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 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.*

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, 2015, 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, 2015, 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).

At the time the petition was approved in 2002, the regulation at 8 C.F.R. § 204.5(m)(1) provided that, to be approved as a special immigrant religious worker, an alien must be coming to the United States to work for a bona fide nonprofit religious organization as a minister or in a professional capacity in a religious vocation or occupation. The regulation further stated:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

The petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on May 15, 2001. According to the petition and accompanying evidence, the beneficiary entered the United States on June 9, 2000, in B-2 nonimmigrant visitor status, and was subsequently granted R-1 nonimmigrant status authorizing his employment with the petitioner from August 30, 2000 to August 29, 2002. The petitioner submitted a September 20, 2000 letter from the principal of [REDACTED] Bangladesh, asserting that the beneficiary served as an imam and teacher for that organization from January 15, 1987 to August 30, 2000. The letter further stated: “This was a full time position. He has been remunerated at the rate of Taka 15,000 monthly and received a traveling allowance [of] Taka 25,000 while serving our denominations abroad.”

On October 23, 2001, the Director, Vermont Service Center, issued a Request for Evidence (RFE), in part requesting additional evidence to establish that the beneficiary had the requisite two years of experience in the religious position immediately preceding the filing of the petition. In a January 8,

2002 "Certificate of and Offer of Employment," submitted in response to the RFE, the petitioner stated in part:

This is to certify that [the beneficiary] has been providing full time religious services as an Islamic Priest of our organization continuously without any interruption on R-1 classification since September 1, 2000 to the present. He has been given appointment as a salaried employee since September 1, of 2000 on his approval of R-1 status. He has been compensated at the rate of \$1,125 monthly with free residential facility. Copies of his pay stubs are enclosed. [The beneficiary] has been devoting approximately 42 hours of full time religious service per week.

The petitioner submitted copies of the beneficiary's Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statements, for the years 2000 and 2001, indicating earnings from the petitioner of \$2,400 and \$13,725 in those years respectively. The petitioner also submitted copies of the beneficiary's paystubs and the petitioner's Forms 941, Employer's Quarterly Federal Tax Returns, for 2000 and 2001.

The petition was approved on April 29, 2002. On July 15, 2002, the beneficiary filed a Form I-485, Application to Register Permanent Resident or Adjust Status, based on the approved Form I-360 petition.

On August 30, 2012, the director erroneously sent a NOIR regarding the Form I-360 petition to the beneficiary, and on September 28, 2012, attorney [REDACTED] submitted a response to the notice, on behalf of the beneficiary. Pursuant to the regulation at 8 C.F.R. § 103.2(a)(3), the beneficiary of a petition is not a recognized party to the proceedings. Accordingly, on November 1, 2012, the director sent a new NOIR to the petitioning organization's attorney of record. The notice stated that, although the petitioner asserted that it employed the beneficiary in a full time position since September 2000, the petitioner's evidence did not support that assertion. Specifically, the director found that the evidence of compensation indicated the beneficiary was working less than full time during 2000 and early 2001. The director noted that, according to the submitted paystubs for September 2000 through January 2001, the beneficiary worked 40 to 45 hours per two-week pay period at a rate of \$15 per hour. The director also noted inconsistencies in the submitted evidence, finding that the paystubs from September 30, 2001, and October 31, 2001, each indicated payment of \$1,125 but listed the same year-to-date earnings total. Further, although the petitioner indicated that it was providing the beneficiary with free housing as part of his compensation, such compensation was not listed on the submitted tax documentation.

Additionally, the director stated that the petitioner failed to establish that the beneficiary was employed by a madrasa in Bangladesh for the portion of the two-year qualifying period prior to his employment with the petitioner. The director noted that the beneficiary had been in the United States in B-2 visitor status during much of the period in question and, although the petitioner submitted a letter from [REDACTED] stating that the beneficiary had traveled as part of his work, the letter lacked sufficient detail about the beneficiary's trips and his duties while traveling. The director also stated that the petitioner failed to provide any verifiable evidence to corroborate the letter from the madrasa.

In response to the November 1, 2012, NOIR, Mr. [REDACTED] sent a copy of the beneficiary's response to the August 30, 2012 NOIR, accompanied by a Form G-28, Notice of Appearance as Attorney or Accredited Representative, authorizing Mr. [REDACTED] representation of the beneficiary. The response included an affidavit from the beneficiary stating that he worked as a full time imam continuously during the two-year qualifying period, first for [REDACTED] until August 30, 2000, and for the petitioner "since August 2000." The beneficiary described his duties for [REDACTED] and stated that he "was given a salary and traveling allowances by this Mosque while serving our denominations abroad" and worked 45 to 50 hours per week. He further stated the following regarding his time spent in the United States while working for his employer abroad:

As a highly trained religious priest in Islamic teachings, I was invited to participate as a guest teacher in the United States and the United Kingdom. As such, I visited [REDACTED] Connecticut and preached on a voluntary basis. However, I spent the bulk of my time at many other Mosques, including the [REDACTED] NY, and [REDACTED] N.Y. where I assisted in various religious services as a Moslem cleric. My services to the Islamic community in 1999 were continuous. However, I was compensated financially by the [REDACTED] and did not take money from those Mosques in 1999. I started to accept financial compensation in the United States in 2000 from the [petitioner].

The beneficiary submitted a photocopy of the September 20, 2000, letter from [REDACTED]. Regarding his employment with the petitioner during the qualifying period, the beneficiary stated:

According to the Notice, I submitted documents indicating that I worked less than 35 to 40 hours per week. However, I worked at least 40 hours per week as an Islamic teacher. I was compensated at a rate of \$7.00 per hour and received free housing allowance. The pay stubs indicate that I was paid \$15.00 per hour. That is an accounting error which I cannot prove at this time because the accountant has since left the Mosque. I do not know why he did his computations this way. It has been more than a decade and no records exist for me to retrieve and demonstrate this. I now get \$16.90 per hour and \$36,912.00 per annum. It is therefore incongruous that I was paid twice as much in 2000 and 2001 as I [am] paid now for doing the same work. . . . The sums as indicated on the W-2 forms and pay stubs which I submitted were accurate. However the hourly rate of pay was wrong.

The beneficiary submitted letters from [REDACTED], and [REDACTED] each of which stated that the beneficiary visited and delivered speeches on a volunteer basis in 1999 and 2000. The beneficiary additionally submitted a letter from [REDACTED] who stated that the beneficiary "has been living in my building [REDACTED] since last thirteen years," in an apartment rented by the petitioner and provided to the beneficiary as a free residence. The beneficiary also submitted affidavits from various individuals attesting to his dedication and full time service to the petitioning mosque.

The director revoked the approval of the petition on January 14, 2013, finding that U. S. Citizenship and Immigration Services (USCIS) received no response from the petitioning organization or its attorney of record to the November 1, 2012 NOIR. On January 31, 2013, Mr. [REDACTED] filed a Form I-290B, Notice of Appeal or Motion.<sup>1</sup> On appeal, Mr. [REDACTED] states that “Mr. [REDACTED] has replied to all inquiries and notices of intent to revoke,” and submits copies of United States Postal Service receipts along with copies of the previously described response to the NOIR.

The regulation at 8 C.F.R. § 292.4(a) states, in pertinent part:

*Authority to appear and act.* An appearance must be filed on the appropriate form as prescribed by [the Department of Homeland Security (DHS)] by the attorney or accredited representative appearing in each case. The form must be properly completed and signed by the petitioner, applicant, or respondent to authorize representation in order for the appearance to be recognized by DHS. . . . Substitution may be permitted upon the written withdrawal of the attorney or accredited representative of record or upon the filing of a new form by a new attorney or accredited representative.

The Form G-28 submitted in response to the November 1, 2012, NOIR authorized Mr. [REDACTED] representation of [REDACTED] who identified himself as the “Applicant.” However, Mr. [REDACTED] is, in fact, the beneficiary of the petition and, as such, is not a recognized party to the proceedings. 8 C.F.R. § 103.2(a)(3). As Mr. [REDACTED] did not submit a Form G-28 authorizing his representation of the petitioning organization, USCIS (a component of DHS) cannot recognize his response to the NOIRs as having been made on the petitioner’s behalf. Accordingly, the director did not err when he found that the petitioner failed to respond to the NOIR.

Regardless, the evidence submitted in response to the NOIR and on appeal is insufficient to overcome the grounds for revocation as stated in the NOIR. Although the beneficiary asserts that he was continuously performing full time religious work on behalf of [REDACTED] in Bangladesh during his visits to mosques in the United States, none of the submitted letters from the mosques indicate that the beneficiary’s service was continuous or full time in support of his assertion. Further, the petitioner did not provide documentation of the beneficiary’s compensation from [REDACTED] or other any other verifiable evidence of his continuous employment by that organization during the relevant portion of the qualifying period. Statements made without supporting documentary evidence are of limited probative value and are not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

With regard to the beneficiary’s employment with the petitioner during the qualifying period, the petitioner has not resolved the inconsistencies in the record. As noted by the director in the NOIR,

<sup>1</sup> Mr. [REDACTED] has since submitted a Form G-28 authorizing his representation of the petitioning organization on appeal.

the submitted paystubs indicate that the beneficiary was working only 40 to 45 hours every two weeks from September 2000 through January 2001. The beneficiary's assertion that he was working full time but earning \$7.00 per hour is inconsistent with the petitioner's statement in the January 8, 2002, "Certificate of and Offer of Employment" that the beneficiary "has been compensated at the rate of \$1,125 monthly with free residential facility" during his employment beginning September 1, 2000. In addition, while the beneficiary stated in response to the NOIR that he is unable to retrieve accounting records to support his explanation, we have no evidence from the petitioner regarding the inconsistencies in the beneficiary's employment and compensation records. Further, the petitioner has not accounted for the discrepancy in the beneficiary's year-to-date earnings statements as noted by the director. 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 submitted evidence does not demonstrate that the beneficiary was continuously engaged in continuous, qualifying religious work during the two years immediately preceding the filing of the petition, the petitioner has not established the beneficiary's eligibility for the benefit sought at the time the petition was filed. 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. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971).

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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