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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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FILE: WAC 09 097 51119 Office: CALIFORNIA SERVICE CENTER Date: **FEB 18 2010**

IN RE: Petitioner: 
Beneficiary: 

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner identifies itself as a local chapter of a national Islamic society. It seeks to extend the beneficiary's status as a nonimmigrant religious worker under section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1), to perform services as an imam. The director determined that the petitioner had not established that the position of imam qualifies as a religious occupation, or that the petitioner is able to compensate the beneficiary at the offered rate.

On appeal, the petitioner submits financial documents and materials relating to the beneficiary's training.

Section 101(a)(15)(R) of the Act pertains to an alien who:

- (i) for the 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; and
- (ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii).

Section 101(a)(27)(C)(ii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii), pertains to a nonimmigrant who seeks to enter the United States:

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
- (II) . . . 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) . . . 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.

U.S. Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. § 214.2(r)(1) state that, to be approved for temporary admission to the United States, or extension and maintenance of status, for the purpose of conducting the activities of a religious worker for a period not to exceed five years, an alien must:

- (i) Be a member of a religious denomination having a bona fide non-profit religious organization in the United States for at least two years immediately preceding the time of application for admission;
- (ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week);
- (iii) Be coming solely as a minister or to perform a religious vocation or occupation as defined in paragraph (r)(3) of this section (in either a professional or nonprofessional capacity);
- (iv) Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and
- (v) Not work in the United States in any other capacity, except as provided in paragraph (r)(2) of this section.

The petitioner filed the petition on February 13, 2009. The first stated basis for denial concerns the nature of the beneficiary's intended work for the petitioner.

NATURE OF INTENDED WORK

The USCIS regulation at 8 C.F.R. § 214.2(r)(3) includes the following relevant definitions:

Minister means an individual who:

- (A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
- (B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
- (C) Performs activities with a rational relationship to the religious calling of the minister; and
- (D) Works solely as a minister in the United States which may include administrative duties incidental to the duties of a minister.

Religious occupation means an occupation that meets all of the following requirements:

(A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination;

(B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination;

(C) The duties do not include positions which are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible; and

(D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

Religious vocation means a formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia, to a religious way of life. The religious denomination must have a class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion. Examples of vocations include nuns, monks, and religious brothers and sisters.

In a letter included with the petition, [REDACTED] of the petitioner's mosque, stated:

An Imam is the principal Minister of religion in the Islamic faith. In order to perform the duties of Imam, an individual must possess several years of experience studying the Islamic faith. This occupation cannot be performed routinely by members since it requires special training and experience in both fields, education and Islamic knowledge. The duties require advanced religious training and specialized course work.

The duties of the Imam are as follows:

- Leading congregational prayers at the mosque five times a day;
- Giving [the] sermon every Friday. The sermon lasts 30 to 45 minutes, followed by a congregational prayer. . . .
- Teaching Muslim children and youth the rules and the beauty of memorizing the Quran, The book of Allah & teaching them its meaning. . . .
- Leading congregational prayers every night during the whole month of Ramadan.
Performing marriage ceremonies
- Performing funeral services and burial procedures
- Providing individual counseling [to] adults of the Muslim community when needed.

Qualification of the Beneficiary

- Over 5 years of mixed experience in the field of Quran teaching for adults as well as children.
- Over four years of leading congregational prayers.
- Bachelor's degree in Islamic Sciences from Al-Azhar University, Cairo, Egypt.

On April 6, 2009, the director issued a request for evidence (RFE), instructing the petitioner to submit, among other things, "evidence pertaining to the professional position," "evidence pertaining to the religious vocation" and "evidence pertaining to the religious occupation" including "a **detailed description** of the work to be done." The petitioner's response addressed other issues raised in the RFE (such as tax-exempt status and evidence that the petitioner operates at the address claimed), but the petitioner did not address any of the issues listed above.

The director denied the petition on October 5, 2009, stating:

[T]he petitioner has failed to establish that the beneficiary is engaged in a religious vocation. . . .

The petitioner has not established that the beneficiary's activities for the petitioner would require any religious training or qualifications. The record does not provide information as to what training or educational requirements would be considered for a qualified religious worker in this position. It is noted that the beneficiary earned a "Certificate" for memorizing [the] Quran. The petitioner has not shown that the beneficiary is performing duties above and beyond those of a caring member of the denomination. Consequently, it has not been demonstrated that the beneficiary is qualified to engage in a religious vocation or occupation. . . .

The petitioner also has not established that the beneficiary qualifies as a religious worker in a religious occupation.

On appeal, the petitioner submits a copy of [REDACTED] earlier letter, stating: "An Imam is the principal Minister of religion in the Islamic faith."

The record indicates that, while the director considered the beneficiary's position in the contexts of a religious vocation and a religious occupation, the director failed to consider whether the position qualified as that of a minister.

The petitioner did not claim that the beneficiary qualifies for classification as a religious worker in a religious vocation or a religious occupation. Therefore, while the director was correct in stating that the petitioner has not met those requirements, such a finding is not an appropriate ground for denial of the petition. We therefore withdraw the director's finding to that effect.

The director did not address the petitioner's claim that the beneficiary qualifies as a minister. The USCIS regulation at 8 C.F.R. § 214.2(r)(10) outlines the evidence required to show that an alien qualifies as a minister. Neither the director nor the petitioner addressed these evidentiary requirements. Therefore, the record does not contain sufficient evidence for us to conclude that the beneficiary qualifies as a minister.

The above issue was not the sole stated basis for denial. The director phrased the decision as though there were three separate grounds for denial, but we find that two of those grounds are so closely interrelated as to amount, in effect, to a single basis for denial relating to the beneficiary's intended compensation.

COMPENSATION

On the Form I-129 petition, the petitioner indicated that it would pay the beneficiary \$30,000 per year, plus "Standard Benefits" of unspecified value. The petitioner indicated that its gross annual income is \$150,000, and that it had no employees as of the filing date.

The USCIS regulation at 8 C.F.R. § 214.2(r)(11)(i) requires the petitioner to submit verifiable evidence explaining how the petitioner will compensate the alien:

(i) *Salaried or non-salaried compensation.* Evidence of compensation 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. IRS documentation, such as IRS Form W-2 or certified tax returns, must be submitted, if available. If IRS documentation is unavailable, the petitioner must submit an explanation for the absence of IRS documentation, along with comparable, verifiable documentation.

In response, counsel stated: "The members of the organization are few and their services are voluntary." In a separate submission, the petitioner submitted a copy of the 2007 Internal Revenue Service (IRS) Form 990 return filed by [REDACTED] from an address in Alexandria, Virginia (the form indicates that the entity was incorporated in Illinois and had changed its address).

The IRS Form 990 included the following figures:

Gross receipts	\$4,048,824
Total revenue	4,353,270
Total expenses	3,324,680
Excess for the year	1,028,590
Net assets or fund balances at end of year	4,169,614
Compensation of current officers	77,200
Salaries and wages of employees	1,225,108

In denying the petition, the director found that the petitioner had not established its ability to pay the beneficiary \$30,000 per year, or that “the beneficiary possesses sufficient independent finances to support himself during his stay in the United States.”

On appeal, counsel states:

To overcome the USCIS issues of compensation to the beneficiary the petitioner is submitting the most recent [IRS Form] 990 indicating the business gross annual income of \$4,659,565. Further attached is the organization’s profit and loss statement from January 2009 through October 2009 indicating the total income for the 10 months period of \$128,333.23. . . .

The petitioner is fully capable of paying the salary of \$30,000 to the beneficiary. He is the only employee of the organization and the 2008 copies of the IRS [Form] 990 as well as the profit and loss statement proves this fact.

The petitioner submits a copy of the 2008 IRS Form 990 for [REDACTED] in Alexandria, Virginia, as well as profit and loss statements for the petitioning entity in Syracuse, New York. The IRS Form 990 returns show the organization’s Employer Identification Number (EIN). The same EIN appears on the Form I-129 petition, but the use of the same EIN is not proof of affiliation. Rather, it is essentially a claim of such affiliation. The Forms 990 clearly do not pertain specifically to the petitioner in Syracuse, but rather to a larger organization based in Virginia.

The Forms 990 indicated that the Society “established several new chapters” during 2007 and 2008, but they did not indicate that the entity assumes responsibility for the expenses incurred by those chapters. We note that the petitioner has stated that it was established in 2008, and therefore the 2007 return cannot directly relate to the petitioning entity in Syracuse. Furthermore, the entity that filed the Form 990 return paid over a million dollars in salaries, whereas the petitioner and counsel have repeatedly stated that it the petitioner has no paid employees other than the beneficiary.

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.

Absent evidence that the entity that filed the Form 990 returns would be responsible for paying the beneficiary’s salary or otherwise meeting the petitioner’s expenses, the Forms 990 have no weight as evidence. That leaves the profit and loss statements for the 22 months from January 2008 to October 2009. The profit and loss statements include the following information:

	2008	2009 (January through October)
Gross Income	\$552,704.99	\$128,333.23
Expenses	550,227.94	119,655.05
Wages	2,615.00	13,056.75
Net Income	2,477.05 ¹	8,678.18

If we add the reported wages to the petitioner’s net income, the petitioner would have been able to pay the beneficiary just \$5,092.05 in 2008, far short of the promised \$30,000 salary. The beneficiary’s salary in the first ten months of 2009 would prorate to \$25,000, but the information provided shows only \$21,734.93 paid or available for payment. Therefore, the profit and loss statements do not show the petitioner’s ability to pay the beneficiary \$30,000 per year as counsel claims.

Copies of the beneficiary’s monthly pay receipts from mid-2009 indicate that the petitioner paid the beneficiary \$3,000 per month in June, July and August, and \$3,200 in September, but the June receipt shows a year-to-date figure of \$7,000, which indicates that the petitioner had paid the beneficiary only \$4,000 during the first five months of 2009. The year-to-date figure for the end of September 2009 is \$17,700. This contradicts the petitioner’s own profit and loss statement, which indicated that the petitioner had paid only \$13,056.75 in wages between January and October 2009. The contradictory figures further undermine the petitioner’s overall credibility. See *Matter of Ho* at 591.

For the reasons discussed above, we affirm the director’s finding that the petitioner has not demonstrated its ability to compensate the beneficiary at the level claimed.

We note that the director also discussed “the inadmissibility of aliens based upon public charge grounds” as discussed at section 212(a)(4) of the Act, but the visa petition procedure is not the forum for determining substantive questions of admissibility under the immigration laws. *Matter of O*, 8 I&N Dec. 295 (BIA 1959). Therefore, this proceeding is not the proper forum for a finding that the beneficiary is inadmissible as a likely public charge.

Beyond the director’s decision, review of the record reveals several additional issues that prevent a finding of eligibility. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); see also *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. See, e.g., *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

TAX-EXEMPT STATUS

8 C.F.R. § 214.2(r)(9) requires the petitioner to submit the following documentation:

¹ The 2008 statement does not show an amount for net income, but we can easily calculate this amount by subtracting the petitioner’s expenses from its gross income.

- (i) A currently valid determination letter from the IRS showing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt.

The petitioner submitted a copy of an IRS determination letter issued to the Muslim American Society in Willow Springs, Illinois, which is evidently the same entity that filed the IRS Forms 990 discussed earlier in this decision. The petitioner has failed to establish that it is the same entity as the exempt entity in Illinois. Furthermore, the IRS determination letter does not mention any group exemption, and therefore we have no reason to presume that the petitioner is covered by an umbrella determination issued to the exempt entity incorporated in Illinois.

We stress that this is not a definitive finding that the petitioner is not tax-exempt, or that the petitioner is not a part of the Illinois-incorporated entity. Rather, we find that the petitioner has not met its burden of proof to establish such a connection or affiliation. The petitioner has merely documented the existence of an Illinois corporation with the same name as the petitioner and implied that the petitioner is a local chapter of the larger entity.

PAST EMPLOYMENT

The beneficiary entered the United States on October 8, 2006, to work as an R-1 nonimmigrant religious worker for three years at Masjid Al Salam, Jersey City, New Jersey. The petitioner seeks to extend the R-1 status previously granted to the beneficiary. The USCIS regulation at 8 C.F.R. § 214.2(r)(12) requires that any request for an extension of stay as an R-1 must include initial evidence of the previous R-1 employment. If the beneficiary:

- (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 filed income tax returns, reflecting such work and compensation for the preceding two years.
- (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available. If IRS documentation is unavailable, an explanation for the absence of IRS documentation must be provided, and the petitioner must provide verifiable evidence of all financial support, including stipends, room and board, or other support for the beneficiary by submitting a description of the location where the beneficiary lived, a lease to establish where the beneficiary lived, or other evidence acceptable to USCIS.

(iii) Received no salary but provided for his or her own support, and that of any dependents, the petitioner must show how support was maintained by submitting with the petition verifiable documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other evidence acceptable to USCIS.

The petitioner's initial submission included some information about the beneficiary's work in Egypt from 2000 to 2006, but no evidence of his work as an R-1 nonimmigrant from 2006 to 2009.

The director, in the RFE, instructed the petitioner to submit the required evidence relating to the beneficiary's past employment. In response, the petitioner submitted a copy of a September 15, 2008 letter from [REDACTED] of the Muslim American Society of Queens (New York), who stated that the beneficiary "was voluntarily working in our organization for the period from July 1, 2007 to August 30th, 2008. . . . The Organization was [in] charge of his accommodation, meals and all other expenses." The record does not include IRS documentation, or other comparable documentation, to support this assertion.

In an October 10, 2008 letter, [REDACTED] of the petitioning entity, thanked the beneficiary for his "visit to our Mosque and leading our night prayer during the entire holy month of Ramadan." The reference to a "visit" by the beneficiary implies that the beneficiary worked elsewhere at the time, but the petitioner did not specify where.

The petitioner submitted a copy of IRS Form 1099-MISC, Miscellaneous Income, showing that that Islamic Society of Monmouth County (New Jersey) paid the beneficiary \$10,500 in 2007. Under "Recipient's name [and] address," the form shows the petitioner's address. This suggests that the beneficiary resided at the petitioner's site in 2007 or early 2008, several months before his "visit" there for Ramadan much later in the year.

Apart from the 2007 IRS Form 1099-MISC described above, the petitioner submitted no evidence of the beneficiary's compensation from 2006 to 2009. The petitioner did not account for the absence of further IRS documentation or offer alternative verifiable documentation of the beneficiary's prior monetary or non-monetary compensation. Therefore, the petitioner has not submitted adequate documentation of the beneficiary's prior claimed work in R-1 status.

We note that the petitioner submitted no evidence of the beneficiary's employment at Masjid Al Salam in Jersey City, which had formed the original basis for his R-1 status. When the beneficiary entered the United States as an R-1 nonimmigrant in 2006, the USCIS regulation at 8 C.F.R. § 214.2(r)(6) read as follows:

Change of employers. A different or additional organizational unit of the religious denomination seeking to employ or engage the services of a religious worker admitted under this section shall file Form I-129 with the appropriate fee. The petition shall be filed with the Service Center having jurisdiction over the place of employment. The

petition must be accompanied by evidence establishing that the alien will continue to qualify as a religious worker under this section. Any unauthorized change to a new religious organizational unit will constitute a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act.

On November 26, 2008, USCIS published new regulations relating to special immigrant and nonimmigrant religious worker petitions. The new regulation at 8 C.F.R. § 214.2(r)(13) reads:

Change or addition of employers. An R-1 alien may not be compensated for work for any religious organization other than the one for which a petition has been approved or the alien will be out of status. A different or additional employer seeking to employ the alien may obtain prior approval of such employment through the filing of a separate petition and appropriate supplement, supporting documents, and fee prescribed in 8 CFR 103.7(b)(1).

Both the old and new regulations make it clear that, if an alien receives R-1 status to work for a given employer, the alien is permitted to work only for that employer. Any religious work performed for any other employer during the period of admission constitutes a violation of status, which would disqualify the alien for extension of status. See 8 C.F.R. § 214.2(r)(5), which limits extension of status to R-1 nonimmigrants who maintain status, and 8 C.F.R. § 214.1(c)(4), which states that an extension of stay may not be approved for an applicant who failed to maintain the previously accorded status.

As noted above, the beneficiary's prior R-1 status authorized him to work at Masjid Al Salam in Jersey City, New Jersey until October 2009. On Part 2 of the Form I-129 petition, under "Basis for Classification," the petitioner checked "Change of employer," acknowledging that the beneficiary's prior R-1 status related to a different employer. Nevertheless, when the petitioner filed the petition in February 2009, the petitioner indicated that the beneficiary already resided at the petitioning mosque in Syracuse, New York. Furthermore, the IRS Form 1099-MISC indicates that the Islamic Society of Monmouth County paid the beneficiary \$10,500 in 2007. The available evidence, therefore, indicates that the beneficiary worked for several different employers while holding R-1 status that only allowed him to work for Masjid Al Salam.

RELIGIOUS DENOMINATION

The final issue we will address here concerns the beneficiary's denominational membership. 8 C.F.R. § 214.2(r)(3) contains the following relevant definitions:

Denominational membership means membership during at least the two-year period immediately preceding the filing date of the petition, in the same type of religious denomination as the United States religious organization where the alien will work.

Religious denomination means a religious group or community of believers that is governed or administered under a common type of ecclesiastical government and includes one or more of the following:

- (A) A recognized common creed or statement of faith shared among the denomination's members;
- (B) A common form of worship;
- (C) A common formal code of doctrine and discipline;
- (D) Common religious services and ceremonies;
- (E) Common established places of religious worship or religious congregations;
or
- (F) Comparable indicia of a bona fide religious denomination.

Instructed to identify the petitioner's religious denomination, and to establish that the beneficiary has belonged to that denomination for at least two years immediately prior to the filing of the petition, the petitioner simply identified the denomination as "Islam." The petitioner also submitted background information about Islam, which noted: "There are a variety of sects or divisions within Islam, the two largest being *Sunni* and *Shi'a*." Given that there are significant doctrinal differences between the sects, it is significant that the petitioner has not specified where the petitioner and the beneficiary lie on this spectrum of beliefs.

It may well be that the beneficiary has always belonged to the same religious denomination as the petitioner. The record, however, does not contain sufficient information to allow such a finding.

The AAO will dismiss the appeal for the above stated reasons, with each considered as an independent and alternative basis for dismissal. 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, the petitioner has not met that burden.

ORDER: The appeal is dismissed.