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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
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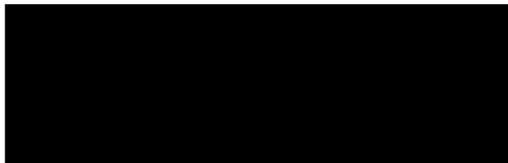
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DATE: **MAY 19 2011** OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner is a mosque that operates on-site schools. It seeks to classify the beneficiary 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 a teacher/associate tahfeez-ul-Qur'an. The director determined that the petitioner had provided inconsistent information and incomplete evidence regarding the beneficiary's intended compensation.

On appeal, the petitioner submits a brief from counsel, payroll records for other employees, and photographs of houses owned by the petitioning entity.

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.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(1) states 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 issue under discussion concerns the beneficiary's compensation. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(11) reads, in part:

Evidence relating to compensation. Initial evidence must state how the petitioner intends to compensate the alien, including specific monetary or in-kind compensation, or whether the alien intends to be self-supporting. In either case, the petitioner must submit verifiable evidence explaining how the petitioner will compensate the alien or how the alien will be self-supporting. Compensation may include:

- (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 [Internal Revenue Service] 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.

The petitioner filed the Form I-129 petition on May 6, 2010. In an accompanying employer attestation, the petitioner indicated that the beneficiary "will be paid a salary of \$9600.00 per year. Accommodations will be provided, either a one or two bedroom apartment. The employee shall be responsible for all utilities and maintenance of the apartment. The petitioner will pay 50% of the medical insurance, as well as books and literature as needed."

In a separate letter, [REDACTED] director of the petitioning entity, stated:

We have offered [the beneficiary] a salary of \$9,600.00 per year. Housing accommodation will be provided based on the following: if the employee is single in the United States, or has family outside the United States, accommodation shall be a room provided at the [REDACTED] dormitory. If the employee has family

accompanying her, then one or two bedroom apartments will be provided based on availability. The employee shall be responsible for all utilities and maintenance of the apartment. The [petitioner] will pay 50% of the medical insurance, and will pay for books and literature as needed.

The initial submission also included an employment agreement and a job offer letter, each providing a similar description of the terms of compensation. Both of these documents stated that an employee living alone would receive dormitory housing, whereas an employee with accompanying family members would have the use of "one or two bedroom apartment owned by" the petitioner. The employment agreement indicated that the beneficiary "will conduct classes for an average of eight (8) hours daily, during Monday to Friday, and four (4) hours on Saturday," for a 44-hour work week.

The beneficiary's résumé listed her marital status as "Un-married." This being the case, the petitioner would provide her with a dormitory room rather than an apartment.

The petitioner's initial submission included bank documents showing balances totaling in the hundreds of thousands of dollars. The petitioner also submitted a list of its "Current Staff," including 33 teachers and four assistant teachers. According to the list, the assistant teachers earn \$10.00 or \$10.71 per hour, which would mean that they earn at least \$22,880 per year, assuming the 44-hour work week described in the employment agreement. Some of the teachers receive a \$10.00 hourly wage, while others receive a monthly salary between \$1,525.66 and \$2,750.00, which translates to an annual salary between \$18,307.92 and \$33,000.

The petitioner's initial submission did not include verifiable evidence that the petitioner would provide the beneficiary's housing, such as documentation showing that the petitioner owns dormitories or rents apartments.

On December 7, 2010, the director instructed the petitioner to submit further evidence, including payroll records and "copies of the petitioner's Quarterly Wage Reports for all employees for the last **four quarters**. . . . The forms should include the names, social security numbers . . . and number of weeks worked for all employees" (director's emphasis). The director also requested "[c]olor photographs of the petitioner's housing/dormitories both inside and outside" and "written testimonies by staff members testifying that they live in the dormitory," along with contact information to allow verification. The director requested evidence of existing arrangements to cover the cost of books and literature.

The director also noted that, according to the employee list submitted with the petition, "teachers working for the petitioner earn considerably more than \$9,600 per year. . . . Please provide an explanation for the considerably lower wage."

In response, [REDACTED], chairman of the petitioning entity, stated:

The salary of \$14,400 derived from a 36 hour work week, which is the intended schedule for this beneficiary. The breakdown amounts to \$7.69/hour which is above

the federal minimum wage of \$7.50. We have agreed that this employee will be working 8 hours per day Monday through Thursday, and half [a] day (4 hours) on Friday, as this is our primary day of worship every week.

The stated salary of \$14,400 does not match the \$9,600 figure that the petitioner repeatedly stated in the earlier submission. [REDACTED] did not explain why the beneficiary's salary is so much lower than those of the other teachers and assistant teachers. Furthermore, the assertion that the beneficiary would work 36 hours a week contradicts [REDACTED] earlier claim that the beneficiary "will conduct classes for an average of eight (8) hours daily, during Monday to Friday, and four (4) hours on Saturday." By [REDACTED] submission, the higher \$14,400 figure, with a shorter 36-hour work week, is barely above the minimum wage. The actual \$9,600 figure, with a 44-hour work week, calculates to about \$4.20 per hour. At 36 hours a week, the beneficiary's proposed \$9,600 salary would still be only \$5.13 an hour.

The petitioner did not submit copies of its quarterly payroll tax filings, including the information requested by the director. Instead, the petitioner submitted copies of "Statements of Deposits and Filings" prepared by a payroll service. The most recent of these statements indicated that the petitioner paid 50 employees \$241,269.62 in the third quarter of 2010. The statements include the notation "We have filed the Quarterly 941 Return," but the record does not include copies of the IRS Form 941 quarterly returns themselves. 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).

An IRS Form W-2 Wage and Tax Statement indicated that the petitioner paid 57 employees \$918,435.65 in 2009. Individual Forms W-2 for 2009 showed the residential addresses of the individual employees. These forms do not indicate that the employees generally resided in communal dormitories or apartments controlled by the petitioner. Rather, the 57 individual Forms W-2 show a total of 53 different addresses in 24 different cities and towns. The only shared addresses are an address of [REDACTED], Georgia, shared by two employees, and [REDACTED], Atlanta, shared by four employees. The petitioner indicated that three of the four employees housed at [REDACTED] were R-1 nonimmigrants.

The IRS Forms W-2 indicated that the petitioner underpaid many of its workers who had been beneficiaries of nonimmigrant or immigrant petitions. For instance, the petitioner had claimed that [REDACTED] worked all through 2009 and received \$1,800 per month, amounting to \$21,600 per year, but that individual's IRS Form W-2 for that year shows only \$16,200 in wages paid. [REDACTED] was said to receive \$1,200 per month since starting work in August 2009, but that individual's Form W-2 showed only one month's pay for 2009.

With respect to reimbursement for books and literature, Dr. [REDACTED] stated: "All books are provided and paid for by the beneficiary, and the beneficiary will retain ownership of all books/literature provided." This contradicts the petitioner's previous repeated assertions that the petitioner "will pay for books and literature as needed," but Dr. [REDACTED] did not explain the discrepancy.

Turning to the beneficiary's housing, [REDACTED] stated: "The beneficiary has been assigned a 1 bedroom apartment unit, owned by [the petitioner]. Evidence attached include the Warranty Deed for this house and pictures of the interior/ exterior of the property. [The petitioner] will provide this house at no charge to the beneficiary."

Dr. [REDACTED] did not specify the address of the house, but counsel stated: "The Beneficiary will be provided housing located at [REDACTED] We are providing color photographs of this property, along with a Warranty Deed, and recent utility bills." Five accompanying photographs show the exterior of the house at [REDACTED] (a "110" is visible beside the door). The submission also included a copy of the deed for the property, but no interior photographs of the property. Copies of utility bills indicate that the November 2010 water bill was unpaid, resulting in a penalty assessed on the December 2010 bill. None of the 57 IRS Forms W-2 for 2009 indicated that any of the petitioner's employees lived at [REDACTED]. The petitioner submitted no evidence that it had ever used the site to house employees.

The director denied the petition on February 3, 2011, noting the apparent underpayment of several immigrant and nonimmigrant religious workers. The director also found that [REDACTED] letters contradicted the petitioner's previous claims, and that the petitioner had failed to submit sufficient evidence regarding the housing arrangements for the beneficiary and the petitioner's other employees. The director observed that the petitioner had previously claimed to provide dormitory housing to employees without accompanying family members, but the record contains no evidence of such arrangements, and that the petitioner offered contradictory claims about who would be responsible for purchasing the beneficiary's books and literature.

The director concluded that the multiple contradictions, discrepancies, and deficiencies in the record raised significant doubts about the truthfulness of the petitioner's claims. 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.

On appeal, counsel states that, when the director considered the salaries paid to other beneficiaries, the director erroneously calculated based on "the date the various visa petitions were approved by the Service, and not the actual day the employee began work for the Petitioner. Also, the chart did not take into account salary increases during the period of employment." The director had raised concerns about the compensation of nine named employees. Most of the appellate exhibits are copies of pay statements issued to four of these alien beneficiaries.

The pay statements show mid-year pay increases that the petitioner's earlier information did not reflect. For instance, employee [REDACTED] began 2009 by earning \$1,200 per month, an amount later increased to \$1,300 per month. In its employee list, however, the petitioner had averaged these figures and stated that [REDACTED] earned \$1,283.33 per month, even though that employee never received that exact salary.

The petitioner may have resolved the specific discrepancies about the compensation paid to other employees, but this evidence does not explain why the petitioner offered the beneficiary a drastically lower rate of pay. With respect to [REDACTED] later reference to a salary of \$14,400 per year, counsel states: "the Petitioner has increased the wage being offered from \$9,600.00 to \$14,400.00 per year, and will require the Beneficiary to pay for and retain ownership of her books and literature." Counsel states that there is no regulatory requirement that the petitioner must file an amended petition to reflect salary increases or other changes to the terms of employment. The record, however, contains no explanation from the petitioner regarding these significant changes. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaighena*, 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 AAO notes that the beneficiary is outside the United States and has never worked for the petitioner. Therefore, any change to her salary would not be a promotion linked to performance or experience. Also, [REDACTED] letter made no mention of any increase in salary. Rather, the letter consistently showed the higher \$14,400 figure, even when quoting from the director's request for evidence, consistent with [REDACTED] having cited that figure in error.

Furthermore, the petitioner does not explain why the original salary figure was so low in the first place. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 175 (Commr. 1998). Under *Izummi*, if the petitioner offered a deficient salary, the petitioner cannot remedy the issue simply by claiming that the beneficiary will earn a higher salary.

The petitioner submitted further exterior photographs of the houses at [REDACTED] and the neighboring house at [REDACTED], but the appeal contains nothing else to address the director's concerns about the beneficiary's housing arrangements. The petitioner's initial submission contained repeated references to employee housing in on-site dormitories, but all references to those dormitories ceased when the director asked for proof that the dormitories actually exist and are available for employee use.

The record contains numerous contradictory and unsupported claims, and the petitioner cannot restore its credibility simply by claiming (through counsel) that it has revised the terms of employment. The AAO agrees with the director that the credibility issues described above preclude the approval of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will dismiss the appeal.

ORDER: The appeal is dismissed.