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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

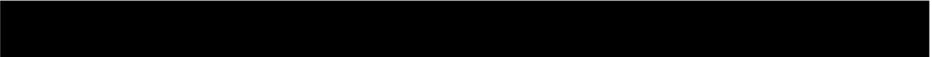
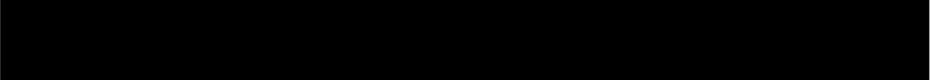


**U.S. Citizenship
and Immigration
Services**



D13

DATE: **SEP 16 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 an Islamic center belonging to the Shia sect of Islam. It seeks to classify the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act, to perform services as an imam. The director, citing contradictory claims about the nature of the beneficiary's intended compensation, determined that the petitioner had failed to establish how it intends to compensate the beneficiary.

On appeal, the petitioner submits a brief from counsel and copies of previously submitted materials.

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 USCIS regulation at 8 C.F.R. § 214.2(r)(11) reads, in part:

(11) *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 September 8, 2010. On part 5 of that form, the petitioner provided the following information:

6. Is this a full-time position?
 No Yes – Wages per week or per year: \$20,000/YEAR

7. Other Compensation (Explain)
[The petitioner left this section blank.]

In an accompanying employer attestation, asked to describe the beneficiary's proposed compensation, the petitioner stated that the beneficiary "will earn \$20,000 per year for his

employment, plus an additional stipend for lodging and other necessities as required.” [REDACTED] [REDACTED], president of the petitioning entity, signed the Form I-129 and the employer attestation under penalty of perjury.

In an accompanying letter, [REDACTED] stated that the petitioner “will compensate [the beneficiary] at a salary of \$20,000.00 per year for a period of two years. This amount includes salary, housing, medical insurance, and expenses. Additional stipend for other personal expenses will be provided as needed.”

The petitioner submitted a copy of IRS Form 8868, Application for Extension of Time To File an Exempt Organization Return, dated August 11, 2009, requesting an extension until November 15, 2009 because “taxpayer is waiting for additional information from third party in order to file a complete and accurate tax return.”

The petitioner also submitted an uncertified copy of its 2008 IRS Form 990 Return of Organization Exempt From Income Tax (dated November 13, 2009), including the following figures:

	Prior Year	Current Year
Total revenue	\$124,050	\$588,572
Salaries, other compensation	[blank]	[blank]
Total expenses	56,837	50,970
Contract labor	—	10,975
Revenue less expenses	67,213	537,602
Cash (end of year)	418,088	143,886
Net assets or fund balances	796,109	1,333,712

The uncertified copy includes the preparer’s signature, but no signature of any official of the petitioning organization.

The petitioner did not claim to have already begun to pay the beneficiary, or to have another paid worker in the same position. Therefore, the petitioner submitted no evidence of any worker’s previous compensation for the same position. The petitioner claimed only one paid worker (a recently hired caretaker earning \$625 per month) at the time of filing.

Bank statements show that, as of July 30, 2010, the petitioner held \$11,559.71 in its “Operating Account,” \$37,179.75 in its “ACH Account,” and \$3,699.44 in its “Bldg. and Construction Account.”

The petitioner submitted interior and exterior photographs of its property. The interior photographs showed communal areas, but nothing readily identifiable as residential space.

On February 1, 2011, the director issued a request for evidence (RFE) asking for additional documentation to support the petition, including additional photographs and a floor plan of the

petitioner's building; IRS-certified copies of the petitioner's IRS Form 990 returns for 2008 and 2009; a copy of the employment agreement between the beneficiary and the petitioner; and further documentation of prior or proposed compensation paid to the beneficiary and any other employees. The director specifically requested additional information and evidence about the beneficiary's housing arrangements.

In response, in a letter dated April 22, 2011, [REDACTED] stated that the petitioner would pay the beneficiary "\$20,000 per year. This amount includes salary, housing, medical insurance and other expenses. Additional stipend for other personal expenses will be provide[d] as needed." The same language appears in an April 12, 2011 job offer letter addressed to the beneficiary. That job offer letter is not an employment agreement between the petitioner and the beneficiary. Rather, it is a letter that the petitioner newly created specifically in response to the RFE.

Nothing in the petitioner's response indicated that the petitioner would provide housing for the beneficiary in addition to, rather than as part of, the \$20,000 base salary. A floor plan for the petitioner's building showed prayer halls, offices, and other rooms, but no room designated as residential. The petitioner submitted no evidence that it owned or controlled a house, apartment, or other property where the beneficiary would reside.

The director denied the petition on May 10, 2011, stating that the petitioner had originally attested that the beneficiary "will earn \$20,000 per year for his employment, plus an additional stipend for lodging and other necessities as required," but then effectively reduced this compensation by claiming that the \$20,000 figure included housing and other expenses. The director noted that the beneficiary had not signed the April 12, 2011 letter containing the revised job offer, thereby indicating acceptance of the reduced terms of compensation. The director found that "the petitioner did not provide the requested evidence related to 'lodging and other necessities,' nor did it explain why it was unable to comply with the request."

On appeal, counsel states: "Petitioner has not made a material change with the terms of the offer. Petitioner has not made any changes to the offer at all." Counsel notes that [REDACTED], in his original August 9, 2010 letter, specified that the "salary of \$20,000.00 . . . includes salary, housing, medical insurance, and expenses." This statement is consistent with the April 12 and 22, 2011 letters submitted later.

It is technically true that the petitioner did not submit new terms of compensation in response to the RFE. This is so, however, only because the petitioner's initial submission described two conflicting sets of terms. In addition to [REDACTED] letter of August 9, 2010, part 5, lines 6 and 7 of the Form I-129 also refer to a \$20,000 annual salary with no other compensation claimed. The employer attestation, on the other hand, specified that the beneficiary "will earn \$20,000 per year for his employment, plus an additional stipend for lodging and other necessities as required." Housing costs are a significant expense, and therefore the discrepancy is not a minor or trivial one. 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.

Counsel argues that the petitioner has provided ample documentation that its income and assets are more than sufficient to cover the beneficiary's \$20,000 annual salary and reasonable additional expenses. There are, however, several deficiencies and anomalies in the financial documentation that the petitioner has submitted.

The AAO notes that the director, in the RFE, requested a copy of the beneficiary's audited financial statement for 2009. In response, counsel stated that no such report exists. In the denial notice, the director listed the materials submitted in response to the RFE. The list erroneously includes materials not in the record, such as "[c]opies of petitioner's 2009 audited financial statements" and "2008 and 2009 W-2's/1099s issued to all personnel." Counsel, on appeal, repeats this list verbatim, including the items not actually found in the record.

Counsel's exhibit list, which accompanied the RFE response, named several items which are either misidentified or entirely absent from the record. The director requested IRS documentation (Forms W-2 and/or 1099) issued to workers. In response, counsel stated "See Exhibit 15," without elaboration. Exhibit 15 consists only of photocopied pay receipts issued to the petitioner's caretaker.

As quoted elsewhere in this decision, the USCIS regulation at 8 C.F.R. § 214.2(r)(11)(i) requires that "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." The payroll documents for the petitioner's caretaker refer to withholding of taxes. The petitioner has not submitted corresponding IRS documentation or any persuasive explanation for its absence. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Counsel acknowledged the director's request for IRS-certified copies of the petitioner's IRS Form 990 returns for 2008 and 2009, and stated: "See Exhibit 13: Application for Extension of Time to File an Exempt Organization Return for 2009 and 2008 Income Tax Filing (Form 990)." The copy of the 2008 IRS Form 990 return was not IRS-certified. Rather, a stamp on the first page identified it as a file copy prepared for the petitioner by its accountant. Like the copy submitted previously, the return shows only the preparer's signature. The application for extension, also submitted previously, pertained to the 2008 return, not the 2009 return.

The director's erroneous finding that the petitioner had submitted an audited financial statement for 2009 does not relieve the petitioner of the responsibility to submit the required documentation, or of the consequences for failing to do so.

The absence of the 2009 IRS Form 990 return is of particular concern because the petitioner's 2008 return showed a more than fourfold increase in gross income, and a reduction in expenses. The 2009 return should answer an important question: whether the petitioner's massive revenue growth in 2008 represents a permanent increase in annual revenues, or rather an atypical "spike," after which the petitioner's revenues returned to levels comparable to 2007. If the petitioner's reported income for 2008 was a one-year phenomenon, and if the petitioner's 2009 return was already available before the February 1, 2011 RFE date but the petitioner failed to submit it, then the submission of the 2008 return by itself misleadingly implied that 2008 was a typical year in terms of revenue.

The AAO acknowledges counsel's argument that petition "adjudications are governed by the preponderance of the evidence standard of proof," meaning that the petitioner's claims should be more likely true than false, but need not "establish [the petitioner's claims] beyond a doubt." Counsel is correct that the standard of proof is preponderance of the evidence rather than absolute proof beyond a reasonable doubt. This standard, however, does not mean that the petitioner need only submit most, or more than half, of the required or requested evidence. The previously cited USCIS regulations at 8 C.F.R. §§ 103.2(b)(2)(i) and (14) make it clear that the petitioner must submit all requested evidence or credibly account for its absence. For this additional reason, USCIS cannot approve the petition.

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.