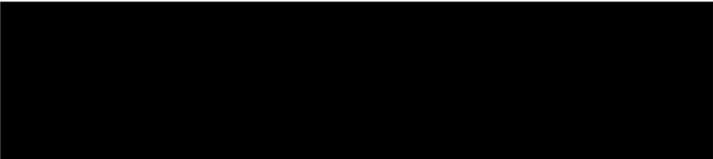


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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



D13

Date: **FEB 15 2012**

Office: CALIFORNIA SERVICE CENTER

FILE: 

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:

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.

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 appeal will be sustained.

The petitioner seeks to change the beneficiary's status to that of a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as an imam and quranic studies instructor. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation and that the beneficiary is qualified for the proffered position. The director also determined that the beneficiary had failed to provide truthful information.

On appeal, counsel asserts that the director denied the petition by "misrepresenting and misconstruing" the evidence, based her decision on documentation not requested, found discrepancies in the evidence by misconstruing spelling errors and "misreading documents," and failed to consider all of the evidence provided. The petitioner submits additional documentation in support of the appeal.

The director also issued a separate decision in which she denied the petitioner's application to change the beneficiary's status based on the beneficiary's failure to maintain his F-1 nonimmigrant student status. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 248.3(a) states that an employer seeking the services of an alien as an R-1 nonimmigrant religious worker, must, where the alien is already in the United States and does not currently hold such status, apply for a change of status on Form I-129, Petition for a Nonimmigrant Worker. Thus, the petition form is also the application form for change of status, but the petition and the application are separate proceedings.

Under the USCIS regulation at 8 C.F.R. § 248.3(g), there is no appeal from the denial of an application for change of status. Therefore, the director's decision to deny the application to change the beneficiary's status is not an issue in this decision.

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 an alien 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 first issue presented is whether the petitioner has established that the proffered position qualifies as that of a religious occupation or vocation.

The regulation at 8 C.F.R. § 214.2(r)(3) provides:

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.

In its April 1, 2009 letter submitted in support of the petition, the petitioner, through Waseem Quadri, a board member, stated that in the proffered position, the beneficiary would be responsible for leading five daily prayers and would be in charge of teaching, memorization and recitation of the Quran. The petitioner further stated:

In this position, [the beneficiary] will be acting solely in carrying out his the [sic] duties of imam and instructor of Quranic Studies. He will lead the five daily prayers (5:00a.m., 1:30p.m., 5:00p.m., 6:30p.m. and 8:00 p.m.) (approximately 12 hours a week); instruct students . . . and teach recitation and memorization of the Quran to students (approximately 20 hours a week). He will also provide religious

instructions to members of the mosque on the evenings and weekends (approximately 6 hours a week). [The beneficiary] will give religious sermons to members, as needed (approximately 2 hours a week). Finally, during the holy month of Ramadan, [the beneficiary] will lead the nightly prayers (Taravee).

The petitioner indicated that the beneficiary would receive an annual salary of \$33,000.

In a June 15, 2009 request for evidence (RFE), the director instructed the petitioner to submit additional documentation to establish the beneficiary's eligibility for the visa classification including "a detailed description of the work to be done, including the name of the employer, specific job duties, level of responsibility, number of hours per week performing the work duties and the minimum education, training, and experience necessary to do the job."

In his July 20, 2009 letter accompanying the petitioner's response, counsel reiterated the duties of the position as outlined by the petitioner in its April 1, 2009 letter. Counsel further stated that the minimum qualifications of the position are a master's degree in Islamic Studies and at least two years of experience as an imam or religious leader. Nothing in the record, however, supports counsel's statements regarding the requirements of the position. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

With its response, the petitioner provided a copy of a page from its website, which indicates that it is a school and a mosque, and that it offers prayers five times daily, a full time school that operates Monday through Friday, a weekend school on Friday evenings, adult classes, sports activities, and afterschool programs and classes.

In a second RFE dated February 18, 2011, the director requested a more detailed description of the duties of the prospective position to include the percentage of the time that the beneficiary would spend on each duty and his level of responsibility, and a detailed schedule of the beneficiary's duties on a daily and weekly basis. In response, the petitioner provided the beneficiary's schedule which indicates that he teaches Quran to kindergarteners and first and second graders on Monday and Wednesday through Friday from 9:00 a.m. to 1:00 p.m., afterschool Hafiz Quran classes from 3:00 p.m. to 6:00 p.m. on Monday through Thursday, and weekend school from 7:00 p.m. to 9:30 p.m. on Friday. The schedule also indicates that the beneficiary has Fajar prayer each day from 6:00 a.m. to 7:00, Zuhr prayer from 1:00 p.m. to 2:00 p.m. each day, Juma prayer on Friday from 1:30 p.m. to 2:30 p.m., Asr prayer from 5:00 p.m. to 6:00 p.m. on Sunday, Friday and Saturday, Magrib prayer from 7:00 p.m. to 8:00 p.m. and Isha prayer from 9:00 p.m. to 10:00 p.m. on Sunday through Thursday and on Saturday. The petitioner indicated that the times of the prayers were subject to change. The petitioner also provided a schedule for its weekend school, which shows that the beneficiary teaches three classes in Arabic from 7:00 p.m. to 7:40 p.m.; 8:30 p.m. to 9:00 p.m. and 9:00 p.m. to 9:30 p.m. on Friday.

A copy of the beneficiary's contract with the petitioner indicates that as imam, his duties would include five daily prayers conducted six days a week, "arrangements" for Friday sermons or other lectures, weekly "family night speech" or other programs, teaching two to three classes a week for youth and adults, classes for new Muslim converts, funeral prayers, marriage counseling and services, "daily weekly" Quran classes, Eid prayers and sermon, youth activities and camps (two to four times a year), interfaith and community outreach activities, articles in a community newsletter and updates on the website, and provide assistance and counsel to the school on curriculum development and improvement.

In her decision, the director noted that the petitioner's weekend class schedule indicates that the beneficiary teaches Arabic and stated that "[t]eaching a foreign language is not religious in scope." The director also found that the beneficiary's daily/weekly schedule indicated that the beneficiary was scheduled to perform daily prayers during two of the periods in which the petitioner's class schedule indicates that he was teaching Arabic classes. The director determined that the petitioner's evidence did not resolve these inconsistencies and denied the petition.

On appeal, the petitioner states:

A schedule of duties was provided to USCIS to generally illustrate [the beneficiary's] schedule. The Service Center claimed that [the beneficiary] is proposed for two differing duties at simultaneous times and this alleged inconsistency was not explained. Muslims are required to pray five times daily. The prayer times varies [sic] daily with the movement of the sun All activities at [the petitioning organization] are trumped by the prayer schedule. Therefore, all activities are put on hold for the prayer and resumed after the prayer. When [the beneficiary] is not present to lead the prayers, a religious individual from the community volunteers to lead the prayer.

It is not clear from the director's decision how the duties of the proffered position are deficient in establishing the position as a religious occupation or vocation. The schedules provided by the petitioner do not establish an inconsistency in the evidence. The petitioner indicated that the beneficiary would work at the weekend school on Friday evening teaching Arabic. These classes do not conflict with the beneficiary's schedule for prayers as his schedule does not indicate that he is scheduled to conduct prayers during the time he is at the weekend school. Additionally, the only time that the beneficiary teaches Arabic is during the three-hour period of the weekend school. Thus, even if teaching Arabic cannot be deemed a religious occupation, the record does not establish that this is the beneficiary's primary duty. The petitioner has sufficiently established that the duties of the proffered position primarily relate to a traditional religious function, primarily relate to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination, and is recognized as a religious occupation within the denomination.

The petitioner has submitted sufficient documentation to establish that the proffered position is a religious occupation within the meaning of the regulation, and the director's decision on this issue is withdrawn.

The second issue is whether the petitioner has established that the beneficiary is qualified for the proffered position.

The regulation at 8 C.F.R. § 214.2(r)(3) defines religious worker as “an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister.”

In its April 1, 2009 letter, the petitioner stated:

At the age of fourteen, [the beneficiary] memorized the entire Holy Quran and continued his religious training at the School of Darussalam. [He] obtained his Bachelor's degree in Arabic and Islamic Studies from the University of Madras in India. He later obtained a Master's Degree in Islamic Studies from Osmania University in Hyderabad, India. He is the form Imam of Masjid e-Aliya. [He] is currently studying to complete his Master's Degree in Business Administration at Herguan University on an F student visa. [The beneficiary] was granted six months of CPT employment at our center through the University.

The petitioner did not indicate that it had established any specific qualifications for the proffered position. In response to the director's February 18, 2011 RFE, counsel stated that the minimum qualifications for the position are a master's degree in Islamic Studies and at least two years of experience as an imam or religious leader. However, as previously stated, counsel's statements are not supported by the record.

The petitioner submitted a copy of a “Certificate of the Holly [sic] Quran Memorization,” indicating that the beneficiary had “successfully completed the study of The Holly [sic] Quran Memorization . . . on the month of dhulhij ah in 1996.” The petitioner also submitted a copy of a September 29, 2005 “Provisional Certificate – O.T.” from the University of Madras certifying that the beneficiary had “qualified for the Oriental Titl [sic] of Afzal-ul-Ulama and had obtained first class, a copy of a certificate from [redacted] indicating that it was a “Degree of Fazeelath” which was “equivalent to B.A.” in 2004, and a “Provisional Certificate” from Osmania University certifying that the beneficiary had passed the “M.A. Islamic Studies” examination in April 2007. The beneficiary's résumé indicates his degree from the University of Madras was a bachelor's degree in Arabic and Islamic studies. The record reflects that the beneficiary had been approved for F-1 nonimmigrant student status to study in the United States at Herguan University majoring in business administration. The beneficiary's transcript from the university indicates that he started at the school in May 2008 and was expected to graduate in July 2011.

In denying the petition, the director determined that the beneficiary had not met the requirements to enter the Herguan University's master of business administration program and stated:

Further, the copies of the degrees from Osmania and the University of Madras indicate provisional certificates. The record is devoid of final documentation of

the degrees awarded to the beneficiary. A search of the degrees issued to the beneficiary by USCIS of online information verification sources yielded no results. It is unknown whether the beneficiary received the educational degrees on record. The record does not contain sealed transcripts from the educational institution abroad for which the beneficiary obtained the claimed degrees.

In describing the position description, the petitioner states on record that in order to qualify for the R-1 position all applicants must have a minimum qualification of a Master's Degree in Islamic Studies. USCIS is unable to verify the beneficiary's educational degrees. Therefore, it is unknown whether the beneficiary is qualified for this position based on the petitioner's own qualification standards. All evidence submitted on record must demonstrate eligibility for the beneficiary seeking the benefit.

On appeal, the petitioner submits the beneficiary's transcripts from the various schools that the beneficiary attended; it provided no explanation about the "provisional" certificates received by the beneficiary. Nonetheless, there is nothing in the record to indicate that the beneficiary fails to meet the petitioner's requirements for the position. The director's determination regarding this issue is withdrawn.

The director also found that the beneficiary had failed to provide truthful information on his résumé. The beneficiary indicated on his résumé that he had worked as an imam with the Masjid-e-Aliya in Hyderabad, India from 2005 to 2006. The beneficiary did not identify any other work during this time period. The director noted that beneficiary failed to include his work with [REDACTED] Engineers and Contractors that he had included in his applications for an F-1 student visa in 2007 and 2008. On appeal, the petitioner submits a January 29, 2008 letter from the Committee Musallian Jama Masjid Sanche Tope certifying that the beneficiary had been employed as an imam with the Jama Masjid Aliya for three years.

The petitioner does not address the beneficiary's failure to include his work with [REDACTED] Engineers and Contractors on his résumé. However, it is not clear from the record that this failure is relevant to the instant petition. The proffered position is that of imam. There is nothing to indicate that a master's degree in business is required for the duties of the proffered position. The record sufficiently establishes that the beneficiary is qualified to serve as an imam and the nonimmigrant religious worker regulation does not require any prior experience for approval of the visa. Accordingly, the director's denial of the petition based on this ground is withdrawn.

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 met that burden.

ORDER: The appeal is sustained.