



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **APR 09 2014** OFFICE: CALIFORNIA SERVICE CENTER [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

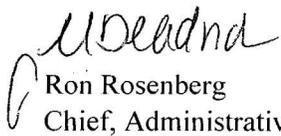
PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)

ON BEHALF OF PETITIONER:
[REDACTED]

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.

Thank you,


Ron Rosenberg
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 withdraw the director's decision and remand the petition for further action and consideration.

The petitioner is an Islamic mosque and school. It seeks to extend the beneficiary's classification as a nonimmigrant religious worker pursuant to section 101(a)(15)(R) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R), to perform services as an imam and religious teacher. The director determined that the petitioner failed to submit qualifying evidence to establish that it is a bona fide non-profit religious organization and failed to meet its burden of proof with respect to the employer attestation. The director additionally found that the petitioner failed to establish how it intends to compensate the beneficiary and to establish the beneficiary's qualifications for the proffered position. Further, the director found that the petitioner failed to establish that the beneficiary maintained his nonimmigrant status.

On appeal, the petitioner submits a brief from counsel and additional evidence.¹

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.

¹ A new attorney represents the petitioner on appeal. The petitioner's previous attorney will be referred to as "former counsel" in this appeal.

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.

As the first ground for denial of the petition, the director found that the petitioner failed to submit sufficient evidence to establish that it qualifies as a bona fide non-profit religious organization that is exempt from taxation. The USCIS regulation at 8 C.F.R. § 214.2(r)(3) provides the following definitions:

Bona fide non-profit religious organization in the United States means a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the Internal Revenue Service (IRS) confirming such exemption.

Bona fide organization which is affiliated with the religious denomination means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the IRS confirming such exemption.

Tax-exempt organization means an organization that has received a determination letter from the IRS establishing that it, or a group that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the Internal Revenue Code . . .

The regulation at 8 C.F.R. § 214.2(r)(9) requires the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing 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; or
- (iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, as something other than a religious organization:
 - (A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;
 - (B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;
 - (C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and
 - (D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

On the Form I-129, Petition for a Nonimmigrant Worker, filed on August 15, 2011, the petitioner identified itself as “[REDACTED]” and listed its federal Employer Identification Number (EIN) as [REDACTED]. With the petition, the petitioner submitted a March 1, 1979 determination letter from the IRS, addressed to The A [REDACTED] [REDACTED] granting that organization 501(c)(3) tax-exempt status. According to the petitioner’s “Certificate of Existence” from the Georgia Secretary of State, Corporations Division, the petitioner “was formed or was authorized to transact business on 05/21/1993 in Georgia.” The petitioner’s

Articles of Incorporation, filed on that same date, does not refer to [REDACTED]. However, property records identify The [REDACTED] as the same entity in 1989, and the petitioner's bylaws, adopted by its Board of Trustees on October 3, 1997, referred to the organization as "[REDACTED]" (henceforth referred to as [REDACTED]). The petitioner's letterhead indicates it is [REDACTED] of [REDACTED].

On December 17, 2012, USCIS issued a Request for Evidence (RFE), in part requesting additional evidence that the petitioner qualifies as a bona fide non-profit religious organization. The director requested an updated IRS determination letter, stating that the name and address on the submitted letter did not match those of the petitioning mosque. The director also stated, "The cover letter submitted on file states that the petitioner was formerly known as [REDACTED]. Please provide all corresponding official name change documentation."

In a letter responding to the RFE, former counsel for the petitioner stated:

[REDACTED] is a non-profit United States religious organization. At the time of designation by the United States Internal Revenue Service (March 1, 1979), the Petitioner was known as [REDACTED]. On May 21, 1993, a DBA was filed with the State of Georgia as the [REDACTED]. This change occurred in order to better identify the petitioner.

The petitioner submitted an affidavit from a former member of the petitioner's Board of Trustees, [REDACTED].

[REDACTED] was established in 1979, and the DBA was filed with the State of Georgia on or about May 21, 1993, as T [REDACTED].

The petitioner also submitted a copy of its brochure, which states that the mosque was "formerly The [REDACTED]" and that it has been "operating for the last 28 years." Additionally, the petitioner submitted copies of IRS Forms W-2, Wage and Tax Statement, for its employees. They included forms from both "[REDACTED]" and all of the forms listed the [REDACTED] which the petitioner identified as the location of its headquarters.

On July 23, 2013, the director denied the petition, in part finding that the petitioner failed to submit sufficient evidence to establish that it qualifies as a bona fide non-profit religious organization. The director stated that, according to the submitted Articles of Incorporation, the petitioner was incorporated "more than 14 years after the date of the IRS exempt letter addressed to [REDACTED] mosque." The director found that the petitioner failed to submit any objective evidence to demonstrate that the petitioner is the same organization as [REDACTED], and that the submitted evidence instead indicates that the petitioner is a separate business entity.

On appeal, the petitioner submits a September 19, 2013 letter from the IRS confirming that The [REDACTED] was granted tax-exempt status under section 501(c)(3). The letter is addressed to [REDACTED] at the same street address as the petitioning mosque. The petitioner also submits a printout from its website, stating that the mosque was “established in 1980 as The [REDACTED]” and later changed its name.

In her appellate brief, counsel for the petitioner states:

Petitioner has always operated under the auspices of the [REDACTED], with the tax [ID] number of [REDACTED] was formed in 1979. In 1993, the [REDACTED] desired to change its name so as not to be confused with another mosque in the Atlanta area. [REDACTED] then hired a corporate attorney to effectuate such change. Since that time, [REDACTED] has operated its main mosque and all of its satellite mosques and schools under the name of [REDACTED] using the original tax ID number from the [REDACTED] . . .

Since the denial of this R1 petition, Petitioner has sought corporate counsel to sort through its legal matters surrounding the use of the two names. Petitioner has always been under the understanding that it simply filed to change its name with the Georgia Secretary of State and has operated under that assumption since 1993. At the Services request, Petitioner has received an updated letter from the IRS showing that the [REDACTED] is still a 501(c)(3) exempt organization. See Exhibit 2. Should corporate counsel determine that [the petitioner] is not eligible to utilize the old tax id number from the [REDACTED] Petitioner will submit a new 501(c)(3) designation from the IRS. However, please understand that Petitioner has in good faith, and at all times and for all purposes, used the tax [ID] number that it has used since 1979.

At filing, in compliance with the regulatory requirement, the petitioner submitted a copy of an IRS determination letter. In response to the director’s request for evidence to establish that the petitioner and [REDACTED] were the same entity, the petitioner submitted its letterhead, bylaws, property records, documentation from its website, and copies of IRS Forms W-2, confirming that it is the same organization as the [REDACTED]. The petitioner has also submitted a new determination letter confirming the tax-exempt status of the [REDACTED] at the petitioner’s address. An Internet search of [REDACTED] returns the petitioner’s name and address. Accordingly, the petitioner has submitted sufficient documentation to establish that it is the same organization as the [REDACTED] and the director’s finding to the contrary will be withdrawn.

As the second ground for denial of the petition, the director found that the petitioner failed to meet its burden of proof with regard to assertions in the required employer attestation. Specifically, the director found that the petitioner failed to resolve discrepancies in the record concerning the beneficiary’s work location, the petitioner’s membership, the number of employees of the petitioning mosque, the number of special immigrant and nonimmigrant petitions filed by the petitioner, and the number of special immigrant and nonimmigrant workers employed by the petitioner. The director also found that the

petitioner failed to submit requested information regarding the previous imam who held the proffered position.

The USCIS regulation at 8 C.F.R. § 214.2(r)(8) requires an authorized official of the prospective employer to complete, sign and date an attestation providing specific information about the employer, the alien, and the terms of proposed employment. The prospective employer must specifically attest to all of the following:

- (i) That the prospective employer is a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation;
- (ii) That the alien has been a member of the denomination for at least two years and that the alien is otherwise qualified for the position offered;
- (iii) The number of members of the prospective employer's organization;
- (iv) The number of employees who work at the same location where the beneficiary will be employed and a summary of the type of responsibilities of those employees. USCIS may request a list of all employees, their titles, and a brief description of their duties at its discretion;
- (v) The number of aliens holding special immigrant or nonimmigrant religious worker status currently employed or employed within the past five years by the prospective employer's organization;
- (vi) The number of special immigrant religious worker and nonimmigrant religious worker petitions and applications filed by or on behalf of any aliens for employment by the prospective employer in the past five years;
- (vii) The title of the position offered to the alien and a detailed description of the alien's proposed daily duties;
- (viii) Whether the alien will receive salaried or non-salaried compensation and the details of such compensation;
- (ix) That the alien will be employed at least 20 hours per week;
- (x) The specific location(s) of the proposed employment; and
- (xi) That the alien will not be engaged in secular employment.

Regarding the beneficiary's work location, the petitioner stated in Part 5 of the Form I-129 petition that the beneficiary would work at the same address listed as the petitioner's address in Part 1, [REDACTED]

[REDACTED] The petitioner gave the same address in the Employer Attestation portion of Supplement R, when asked to list “the specific address(es) or location(s) where the beneficiary will be working.” In a description of the beneficiary’s qualifications, the petitioner stated that the beneficiary “has been serving as [REDACTED], a unit of the [petitioner] in [REDACTED].”

In the December 17, 2012 RFE, the director requested additional information about the petitioner, including a “roster/assignment chart” of the students assigned to each of the teachers including the beneficiary, and an organizational chart including the beneficiary’s proposed position.

In response, former counsel stated:

The Petitioner operates the [REDACTED]. The total number of students currently enrolled at the Schools are [sic] 296. Each school is a functional unit of the [REDACTED] of [REDACTED] as shown in the By-Laws which were enclosed with the petition, and are attached here as Exhibit A. The [REDACTED]. The Beneficiary teaches at this location as shown on his class roster/assignment sheet ...

The petitioner submitted a chart listing 21 “[REDACTED]” students and 13 “Evening Quran Classes” students assigned to the beneficiary at [REDACTED]. A chart listing the beneficiary’s [REDACTED] indicated that the beneficiary would also lead “daily obligatory prayers at [REDACTED].” The petitioner submitted organizational charts for the petitioning organization and its individual units, including [REDACTED] chart included the beneficiary’s position.

In denying the petition, the director found that “[n]o roster for the [REDACTED] was submitted.” Additionally, the director noted that the evidence submitted in response to the RFE indicated that the beneficiary would work at a different address than that indicated on the Form I-129 petition. The director stated that “rather than clarifying these inconsistencies, in response to the RFE, the petitioner submitted additional documentation and made statements that contradicted the already inconsistent information.”

On appeal, counsel acknowledges that the petitioner provided an incorrect address on the petition as the beneficiary’s work location, but asserts that “the evidence submitted in support of the petition clearly showed where [b]eneficiary’s work would be performed.” A review of the record demonstrates that contrary to the director’s finding, the petitioner’s RFE response did include a roster for the beneficiary’s students at [REDACTED] and consistently referred to the beneficiary’s work location at [REDACTED]. This was the same address the petitioner identified on the Form I-129 Supplement R as the location where the beneficiary “has been serving as Imam.” Accordingly, the director’s findings regarding the beneficiary’s work location are withdrawn.

Regarding the number of members of the petitioning organization, on the Form I-129 Supplement R, Employer Attestation, the petitioner stated that it has 1,200 members. The petitioner's Articles of Incorporation, submitted with the petition, stated that the organization "shall have no members, and no individuals other than the Board of Trustees shall have voting rights with respect to the affairs of the Corporation."

The director's RFE included the following instructions:

Congregation: Petitioner attested it has 1,200 members. Please submit a current, clearly legible membership directory verifying the total number of actual congregants. Explain the requirements to and process for becoming a member. Explain where members meet at your location. What are your office hours? What are your hours of operation for worship? Where is worship held?

In a letter submitted in response to the RFE, the petitioner stated that it "does not require membership as part of our services," and that "[i]t is approximated that over 1,200 frequent our prayer services on Friday and over 4,000 on religious holidays." Counsel stated that the petitioner "does not maintain a membership directory."

The director found that petitioner's attestation that it has 1,200 members to be inconsistent with its statement in response to the RFE that it does not require membership.

The petitioner has indicated, through its Articles of Incorporation, that it has no formal or voting members, other than the Board of Trustees. Therefore, the petitioner's statement that the 1,200 members listed on the attestation referred to its regular attendees at its services, rather than formal members, is credible, and the director's finding of inconsistency here is withdrawn. However, the issue remains that the petitioner has failed to establish the claimed 1,200 attendee/congregants through documentary evidence. The director's RFE specifically requested the petitioner to verify the "number of actual congregants." Statements lacking supporting documentary evidence are not sufficient for purposes of meeting 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)). Therefore, the petitioner has not sufficiently supported its assertion regarding membership.

With regard to the number of the petitioner's employees, the director stated that the petitioner initially attested to having 57 employees at the same location where the beneficiary would be working, but later, in response to the RFE, asserted that it now has 42 employees "at its Mosques and Schools." The director found inconsistencies in the evidence regarding the number of employees and their work locations. On appeal, counsel states that the number of the petitioner's employees "varied from the time of filing in 2011, to time of RFE in 2013." The petitioner asserts that it was not trying to deceive USCIS, but was rather "trying to be inclusive as to the number of its employees at all of its locations" and that "[l]ike any community organization and school, the number of employees fluctuates depending on enrollment, teacher's situations[,] etc." The petitioner's explanation is credible and consistent with the evidence. Therefore, the director's finding regarding the number of the petitioner's employees will be withdrawn.

The director also found inconsistencies with regard to the petitioner's assertions regarding the number of special immigrant and nonimmigrant religious worker petitions it had filed and the number of aliens holding special immigrant or nonimmigrant religious worker it employed. The director found that the information listed on the petition did not match USCIS records, that the list submitted by the petitioner in response to the RFE included names that were outside of the five-year period requested, and included names of individuals "that may or may not be alien religious workers of whom USCIS has no record of filing." On appeal, counsel states that the petitioner "has sought to clarify its own records as to the number of special immigrant religious worker and nonimmigrant religious worker petitions it has filed." The petitioner submits a new list of pending, denied and withdrawn petitions, and states that it "was confused as to what filings had been made for some of the peoples previously listed."

This assertion regarding the petitioner's confusion and its efforts to clarify its records is consistent with the submitted evidence. Although the director stated that the petitioner's response to the RFE "suggests that it may be engaged in unlawful employment practices," the director did not find, and the evidence does not indicate, that the petitioner willfully misrepresented a material fact.

As the final inconsistency related to the Employer Attestation, the director found that the petitioner failed to provide requested information regarding a previously employed imam whom the beneficiary replaced. However, the record reflects that, in response to the director's RFE, the petitioner did provide the requested information in a February 22, 2013 letter from its chairman, [REDACTED]. Therefore, the director's finding on this issue is withdrawn.

As the third ground for denial, the director found that the petitioner failed to establish how it intends to compensate the beneficiary. The USCIS regulation at 8 C.F.R. § 214.2(r)(11) provides:

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 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. . . .

On the Form I-129 petition, Part 5, the petitioner indicated that the compensation for the proffered position would include a \$42,000 annual salary plus "Housing." In an accompanying letter, the

petitioner stated: "We will continue to pay him the salary of \$42,000.00 annually. In addition, we will pay 50% of his medical insurance." An August 11, 2011 Employment Contract, also submitted with the petition, stated that the beneficiary "shall receive annual compensation equivalent to forty two thousand U.S. Dollars (U.S. \$42,000.00) gross (before taxes), pro-rated twice monthly."

The petitioner submitted copies of the beneficiary's paystubs from January 2011 through March 2011 and from June 2011 through July 2011 indicating biweekly payments of \$1,750.00, consistent with an annual salary of \$42,000. The paystubs each indicated a \$52.13 deduction for health insurance. The petitioner also submitted uncertified copies of the beneficiary's Forms 1040, U.S. Individual Income Tax Return, for the years 2009 and 2010, indicating total income of \$36,000 and \$37,200 respectively.

The petitioner indicated on the petition that it had gross annual income of \$4,626,361.46 and net annual income of \$1,212,921.02. The petitioner submitted a list of its bank accounts with current balances indicating a total of \$1,004,740.03, along with printouts of August 11, 2011 balance summaries for each account from the [REDACTED] website.

In the December 17, 2012 RFE, the director requested certified copies of the beneficiary's tax returns, all of the beneficiary's IRS Forms W-2 since 2008, and an itemized record of the beneficiary's earnings from the Social Security Administration (SSA). The RFE also instructed the petitioner to provide evidence of its provision of housing to the beneficiary, and to provide evidence as to who would be responsible for the beneficiary's health insurance. Additionally, the petitioner was instructed to submit copies of the petitioner's 2009, 2010 and 2011 financial statements with supporting documentation, copies of the petitioner's payroll records, a copy of the petitioner's 2011 IRS Form W-3, Transmittal of Wage and Tax Statement, copies of IRS Forms W-2 for all employees for 2009 through 2011, and state quarterly wage reports for all four quarters of 2009 and 2010.

Regarding its compensation of the beneficiary, the petitioner submitted the beneficiary's IRS Tax Return Transcripts and copies of the beneficiary's IRS Forms W-2 for the years 2008 through 2011, as well as the beneficiary's SSA earnings record covering the same years. The submitted evidence indicated that the beneficiary received the following income from the petitioner during 2008, 2009, 2010, and 2011 respectively: \$9,000.00, \$36,000.00, \$37,200.00, and \$42,000.00. The petitioner also submitted copies of the beneficiary's paystubs from October 2008 through January 2013, indicating continuing biweekly payments of \$1,750.00 since January 2011. In a letter responding to the RFE, former counsel stated that the petitioner "provides medical insurance" to the beneficiary. The petitioner submitted a copy of the beneficiary's health insurance card, and a record from the petitioner's payroll service which indicates that the petitioner and the beneficiary each contribute \$79.50 per pay period towards the beneficiary's health insurance. This is consistent with the petitioner's assertion at the time of filing that it would pay 50% of the beneficiary's medical insurance. Regarding the beneficiary's housing, former counsel stated:

The Beneficiary is currently paid an annual salary of \$42,000.00 which is incrementally higher than others on the Petitioner's staff. For this reason, the Beneficiary is paying for his housing expenses.

In response to the request for documentation of the petitioner's finances, the petitioner submitted copies of records from its payroll service, Intuit, Inc., copies of IRS Forms W-2 for its employees for 2009, 2010, and 2011, and copies of IRS Form 941, Employer's Quarterly Federal Tax Return, for the first, second, and fourth quarters of 2011 and the first quarter of 2012. The petitioner also submitted unaudited financial statements for the years 2009, 2010, and 2011. The 2009 statement indicated total revenue of \$3,389,617.29, total expenses of \$3,073,969.11, and "Net Operating Income" of \$255,648.18. The 2010 statement indicated total revenue of \$3,313,731.57, total expenses of \$2,467,263.31, and "Net Operating Income" of \$846,468.26. The 2011 statement indicated total revenue of \$2,730,566.50, total expenses of \$2,068,167.26, and "Net Operating Income" of \$662,339.24. Additionally, the petitioner submitted copies of December 2012 bank statements for its accounts.

In denying the petition, the director found the statement to the effect that the beneficiary pays for his own housing to be inconsistent with "the petitioner's statement on the petition that it would pay for [the] beneficiary's housing." The director also found that the petitioner failed to submit the requested state quarterly wage reports which would have provided "detail[s] about the petitioner's employees, including identifying employees by name and other pertinent information." Additionally, the director stated that the submitted financial statements were inconsistent with the gross and net incomes listed on the petition, and were not audited or verifiable.

On appeal, the petitioner states:

It is clear that Petitioner has met its burden to prove that it has the ability to pay the beneficiary's wages in that it is already paying the proffered wages to him. . . .

The Service also states that the petitioner is contradictory in that it says it will pay for Beneficiary's housing, but it does not. While Petitioner does offer housing to its Imams upon availability, the housing is on the main campus of the mosque, which is located near downtown Atlanta, Ga., but the beneficiary works at a separate location almost 20 miles from the main mosque. As such, the beneficiary chose to live with his family close to his work location.

Regarding the lack of state quarterly wage reports, counsel states that the petitioner provided all of its IRS Forms W-2 for the years 2009 through 2011, and that these forms include identifying information about the petitioner's employees. In addition, although the petitioner does not address the director's finding regarding the discrepancy between the gross and annual incomes listed on the petition and the information in the submitted financial statements, the evidence demonstrates that the petitioner has been paying the beneficiary the proffered salaried compensation of \$42,000 per year and has been paying for half of the beneficiary's medical insurance as asserted at the time of filing.

The director's denial, however, was based in part on the petitioner's failure to provide the housing as attested to on the Form I-129. Although the petitioner indicates on appeal that the beneficiary chose to forego the offered housing because of its location, the petitioner has not submitted verifiable documentation to support the claim that housing was available as initially attested to and that the

beneficiary declined the housing. Further, the assertions made on appeal are inconsistent with the petitioner's statement in response to the RFE that the beneficiary pays for his own housing because his salary is higher than other employees. The petitioner is responsible for the inconsistencies in the record and must provide independent, objective evidence to reconcile them. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). As the petitioner failed to provide the non-salaried compensation attested to on the petition and gave inconsistent explanations for this failure, the petitioner did not submit verifiable evidence of its intent and ability to compensate the beneficiary as claimed. If USCIS fails to believe that a fact stated in the petition is true, it may reject that fact. See *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

As the fourth ground for denial of the petition, the director found that the petitioner failed to establish the beneficiary's qualifications for the proffered position. The USCIS regulation at 8 C.F.R. § 214.2(r)(3) includes the following 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 worker means 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.

The USCIS regulation at 8 C.F.R. § 214.2(r)(10) requires the petitioner to submit the following documentation if the alien will work as a minister:

- (i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and
- (ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of

prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological education is accredited by the denomination, or

(iii) For denominations that do not require a prescribed theological education, evidence of:

- (A) The denomination's requirements for ordination to minister;
- (B) The duties allowed to be performed by virtue of ordination;
- (C) The denomination's levels of ordination, if any; and
- (D) The alien's completion of the denomination's requirements for ordination.

On the Form I-129 petition, the petitioner indicated that the beneficiary would be employed as an "Imam and Religious Teacher," and described his qualifications for the position:

From August 11, 2008 to the present, [REDACTED] has been serving as Imam at the [REDACTED]

For the previous seven years, he was the [REDACTED] and Vice Principal at the [REDACTED]. At the young age of twelve, he had completed memorization of the Quran.

He has been qualified as an [REDACTED] and completed courses in English and Jurisprudence.

The petitioner submitted a "[REDACTED]", which stated that the beneficiary "received education at the [REDACTED] from 1406 to 1414 and completed the Course of Studies." The document was dated "10.5.1415," and listed the beneficiary's birth date as "26, Shawwal 1395."

In the December 17, 2012 RFE, the director requested an accurate and certified translation of the [REDACTED]. In response, the petitioner submitted a certified translation of the dates included on the previously submitted letter as follows:

Hijri Date of 10.5.1415 correlates to October 15, 1994

Hijri Date of 26 Shawwal 1395 correlates to November 1, 1975

Hijri Years 1406 to 1414 correlates to 1986 to 1994.

The petitioner also submitted a new [REDACTED]. The certificate was dated October 17, 1994, and listed the beneficiary's date of birth as January 1, 1972. No explanation was provided for the discrepancies between the two certificates regarding the certificate date and the beneficiary's birth date.

In the July 23, 2013 decision, the director stated that the listed birth date on the originally submitted certificate was inconsistent with other evidence of the beneficiary's birth date. The director stated: "Because the variation in the date of beneficiary's birth on the [REDACTED] was not explained, the Certificate cannot be deemed a reliable document relating to the beneficiary."

On appeal, the petitioner states:

In the original petition, Beneficiary provided a [REDACTED] that included dates from the Hijri calendar (Islamic calendar), which contained an incorrect date of birth. Beneficiary state that he never realized that the date of birth was incorrect, and once he realized it, he obtained a new [REDACTED] with his correct date of birth. This document, enclosed herein at Exhibit 7 was provided in response to the RFE. This document clearly shows that his correct date of birth is January 1, 1972, which corresponds to his birth certificate and passport. The dates that he studied, from 1986 to 1994, have been and remain correct dates. We ask that the Service accept the corrected [REDACTED] that was provided in response to the RFE, which contains all accurate and correct information.

The petitioner did not submit any competent, objective documentary evidence, however, such as a letter from [REDACTED] to reconcile the inconsistencies discussed by the director. Left unexplained is the reason(s) for the purported error in the first Certificate [REDACTED] saw fit to issue a second Certificate with the new birth date. *Matter of Ho*, at 591-592 (It is incumbent upon the petitioner to resolve inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile conflicting accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice). Accordingly, the petitioner has not sufficiently resolved the discrepancies surrounding the document or established its reliability.

As the final ground for denial, the director found that the petitioner failed to establish that the beneficiary maintained his nonimmigrant status. 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 (including IRS documentation if available). The regulation at 8 C.F.R. § 214.2(r)(13) states that 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. Under 8 C.F.R. § 214.2(r)(5), extension of status is available only to aliens who maintain R-1 status.

The issue of the beneficiary's maintenance of R-1 status is significant only insofar as it relates to the application to extend that status. An application for extension is concurrent with, but separate from, the nonimmigrant petition. There is no appeal from the denial of an application for extension of stay

filed on Form I-129. 8 C.F.R. § 214.1(c)(5). Because the beneficiary's maintenance of status is an extension issue, rather than an issue related to eligibility for the petition, we lack authority to decide this question.

We conduct appellate review on a *de novo* basis. See *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). Although the petitioner has overcome the material grounds stated in the director's denial of the petition, given the inconsistencies in certain evidentiary documents and statements made by the petitioner, the record, as it now stands, does not support approval of the petition. 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* at 591-92.

The USCIS regulation at 8 C.F.R. § 214.2(r)(16) reads:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, or satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

The director shall determine whether the petitioner has satisfied the regulation at 8 C.F.R. § 214.2(r)(16) and whether a compliance review, onsite inspection or other verification of the petitioner's claims is appropriate in this instance. The director may request any additional evidence deemed warranted, including further evidence regarding the petitioner's membership, the petitioner's intent and ability to provide housing to the beneficiary, and the reliability of the [REDACTED] submitted in support of the beneficiary's qualifications.

This matter shall be remanded to the director for consideration of the issues stated above and such other matters as the director deems appropriate. The director should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. 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).

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.