



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: **MAR 06 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: [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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

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 dismiss the appeal.

The petitioner is a mosque. It seeks to classify the beneficiary 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/religious teacher. The director determined that the petitioner failed to establish that the beneficiary will be employed in a qualifying position and that the beneficiary is qualified for the proffered position. The director also found that the petitioner failed to establish how it intends to compensate the beneficiary and the beneficiary's denominational membership for at least two years immediately preceding the filing of the petition.

On appeal, the petitioner submits a brief from counsel.

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 first issue to be discussed is whether the petitioner established that the beneficiary will be employed in a qualifying 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 petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on July 21, 2011. On the petition, the petitioner stated that it would employ the beneficiary in a full-time position as an "Imam/Religious Teacher." On Supplement R, the petitioner described the beneficiary's proposed daily duties as:

- To lead congregational prayers on Fridays.
- Perform marriage ceremonies.
- Be a leader for religious duties in the community
- Direct all Mosque activities
- Teach Islam

In an accompanying letter, dated June 24, 2011, the petitioner stated:

In this ministerial position of Imam, [the beneficiary] will be the Islamic religious leader of our organization. He will be responsible for leading Fridays and five daily prayers, presiding over funerals, performing marriage ceremonies, providing consultation and mediation, teaching Islam to the members and their children, and fulfill the role of spiritual leaders to the members of the Mosque. In this capacity, Imam [redacted] will be solely carrying on the ministerial position of an Imam, a [sic] Islamic Religious leader, in the United States.

The petitioner additionally submitted a "Pastoral Contract," dated November 28, 2010, to begin "when [the beneficiary] receives his R-1 visa and is legally allowed to be employed according to the Immigration Laws of the United States." The contract listed the following responsibilities:

1. The [redacted] is being hired for 40 hours per week for the performance of Pastoral duties and responsibilities.
2. The Imam shall direct the worship services including Friday's Congregational Prayer, mandatory daily prayers, five times daily.
3. The Imam shall perform marriage ceremonies to the [the petitioner's] members.
4. The Imam shall perform funeral service to the [the petitioner's] members.
5. The Imam shall be the spiritual and administrative leader to the Mosque and shall work in a spirit of cooperation with the Board of Directors.
6. The Imam shall direct the spiritual education of the Mosque.
7. The Imam shall teach Islam to the members of the center.
8. The Imam at times will perform few hospital, jail, and home visitations.

9. The Imam shall serve as a Moderator of the Board of Directors in accordance with the [the petitioner's] By-Laws.

10. The Imam agrees that he will at all times faithfully and to the best of his ability perform all the duties herein described.

On September 28, 2011, USCIS issued a Request for Evidence (RFE), in part requesting additional information about the proffered position, including a detailed description of the work to be done. In a December 1, 2011, letter responding to the RFE, the petitioner provided the following job description:

1. To lead 5 daily prayers (Timetable of 5 daily prayers enclosed).
2. Teach religion to the young and the community as a whole.
3. Perform obligatory funerary rites for the deceased.
4. Perform marriage ceremonies.
5. Be a spiritual counselor [sic] for the members of the community.
6. Perform Sermons and prayers during Fridays.
7. Organize and teach children during Saturdays and Sunday school.

The petitioner submitted a "Prayer Times Schedule," including five daily prayer times, for the month of December 2011.

On July 11, 2012, USCIS issued a second RFE, in part requesting additional information about the proffered position and instructing the petitioner to submit a daily and weekly schedule describing the beneficiary's duties. In an October 1, 2012, letter responding to the second RFE, the petitioner provided additional lists of the beneficiary's prospective duties, similar to those already provided, including leading the daily prayers, performing marriages and funerals, providing religious counseling, teaching religion, and coordinating mosque activities. The petitioner asserted that "[t]he total number of hours spent daily on these rituals and activities are between 8 to 10 hours." The letter included an "example" schedule describing a week of proposed duties broken down by hour. The petitioner also indicated that it was submitting a "schedule" at Exhibit 11, which consisted of a prayer timetable for September 2012.

USCIS issued a third RFE on February 12, 2013, in which the director noted inconsistencies between the petitioner's statements regarding the number of hours the beneficiary would work and the example schedule. The director stated:

[I]n your response to the RFE, you stated that the total number of hours spent daily on the rituals and activities are between 8 to 10 hours and also provided “an example” of the schedule for the proffered position. However, the example schedule for the proffered position as indicated by you shows only 6.5 work hours on Mondays, 4 work hours on Tuesdays, 4.5 work hours on Wednesdays, 9 work hours on Fridays, 8 work hours on Saturdays, and 12 work hours on Sundays, which is a total of 44 work hours per week. Even if the beneficiary were to spend 8-10 hours per day performing religious activities in [the] proffered position, the schedule provides for only one (1) day off on Thursdays, e.g. the schedule shows a 6-day work week. This would mean that the beneficiary would be required to work 48-60 hours per week and not 40 as you alleged. Further, as your Pastoral Contract indicates the beneficiary “shall direct the mandatory prayers, five times daily;” however, according to the “example schedule,” the beneficiary would only be performing 2 daily prayers on Mondays, Fridays, and Sundays, and 3 daily prayers on Wednesdays and Saturdays, and 4 daily prayers on Tuesdays, for a total of 16 prayers per week as compared to 25 prayers mandated by the Pastoral Contract and also as attested to in the petition.

The director instructed the petitioner to “provide clarification for the discrepancies.”

In response to the RFE, the petitioner submitted a letter from counsel, dated April 29, 2013. Counsel asserted that the inconsistencies were “due to a miscommunication with the board of the center in respect to further structure of the center and its need for more religious leadership,” and that the pastoral contract submitted at the time of filing was outdated and being revised. Counsel also stated:

[S]cheduling of activities and leadership of some prayers are at the discretion of the Imam. i.e., if the Imam does not want to lead a communal morning prayer, he is not required to. However, he is required to be present for mandatory Friday communal prayers and other mandatory prayers throughout the year. . . .

To provide an hour by hour and day by day schedule is not a proper portrayal of the needed services of an Islamic religious leader. The Imam would only be required to work 40 hrs per week, however, a spiritual leader is sometimes required for off hours counseling, funerals, etc. His schedule is provided with flexibility to achieve a balance between his personal life and his ministerial [sic] duties.

On June 18, 2013, the director denied the petition, in part finding that the petitioner failed to resolve discrepancies regarding the duties and hours of the proffered position. The director stated:

While the petitioner indicated that the proffered position is a full-time position, the daily and weekly activities of the proffered position as described by the petitioner in the petition are vague and lack essential detail for USCIS to fully discern whether or not the beneficiary will be coming to work in a religious vocation and whether or not the duties relate to traditional religious functions of the religious denomination.

On appeal, counsel for the petitioner argues that the petitioner has provided sufficiently detailed descriptions of the beneficiary's prospective duties and asserts that "requirement of an hourly schedule is not realistic" for the position of Imam. Counsel states:

The USCIS seeks clarification of the duties of the Imam in their RFEs but then uses the fact that said clarifications are not identical to what was submitted earlier to claim inconsistencies to deny the application. The responses are not inconsistent in that they are not contradictory, some state some duties while inadvertently missing others. The substance of his duties remains clear in all evidence that was submitted by Petitioner.

USCIS requested details about the proffered position, including daily and weekly schedules, for the purpose of determining the nature of the beneficiary's duties and how much of the beneficiary's time would be spent on religious duties versus secular activities. The inconsistency regarding the number of daily prayers led by the beneficiary relate to whether the beneficiary will in fact be employed in a ministerial capacity. Similarly, while the inconsistencies in the petitioner's statements indicate that the beneficiary may be working more than 40 hours per week, they do not contradict the petitioner's assertion that the position will be "full-time" as indicated on the petition. Contrary to the director's finding, the petitioner's descriptions of the prospective duties are sufficiently detailed and consistent to establish that the activities have a rational relationship to the religious calling of the minister and that his administrative duties are incidental to the position of a minister. The petitioner has established that the proffered position is a qualifying ministerial position according to the definition at 8 C.F.R. § 214.2(r)(3). The director's findings on this issue will be withdrawn.

The second issue to be discussed is whether the petitioner established that the beneficiary is qualified for the proffered position. In the June 18, 2013 decision, the director made separate findings regarding the petitioner's failure to support its attestations about the beneficiary's qualifications and petitioner's failure to establish the beneficiary's eligibility for the visa qualification. As both findings relate to whether the beneficiary is qualified for the proffered position, they are discussed as one issue here.

As cited above, the regulation at 8 C.F.R. § 214.2(r)(3) states that a minister must be "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." The 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 Supplement R, the petitioner described the beneficiary's qualifications for the proffered position as "over seven (7) years of experience as a religious teacher, plus a Bachelor's degree in Theology from [REDACTED]. Although the petitioner indicated on the Religious Denomination Certification that it "is a free standing Mosque and is not affiliated with any other groups," the petition and accompanying evidence identified the petitioning mosque as a Muslim organization.

The petitioner submitted a copy of its by-laws, which stated that "[t]he Imam shall be selected by the other Board members, who shall take into consideration such attributes as the Imam's education, experience and moral standards."

In a letter accompanying the petition, the petitioner provided an additional description of the beneficiary's qualifications:

[The beneficiary] has been a member of the Islamic Faith his entire life. He received a Bachelor's of Theology degree from [REDACTED] Syria. He was employed as an Imam with the Islamic Religious Organization of Albanian [sic]. He was also visiting Imam at the [petitioning organization] for the month of Ramadan in 2010.

From 2007-2010, he served as an Editor to [REDACTED]. In this position, he oversaw the writing staff; write articles about Islam and current events.

From 2003-2007 [the beneficiary] served as a Religious Teacher for [REDACTED] in [REDACTED] Albania. He served both in the girls and boys divisions of the school. In this role, he taught religious subjects, acted as a counselor and led prayers in schools.

The petitioner submitted a copy of the beneficiary's résumé, stating that he had been employed as a religious teacher at [REDACTED] from 2003 to 2006, and at the [REDACTED]

from 2007 to 2010. The résumé stated that, from 2007 to 2010, the beneficiary was employed both as the editor of the [REDACTED] and as imam at the [REDACTED] Albania. The résumé also stated:

Education      1997 – 2003      [REDACTED], Syria

Bachelor's Degree in Theology

Minor in Foreign Languages

The petitioner submitted a letter from [REDACTED] signed by the school director, [REDACTED]. The letter stated that the beneficiary “worked as a teacher in this school” from September 1, 2003, to December 19, 2005, and from September 1, 2007, to October 31, 2010, and that he “worked also as the Imam of the [REDACTED]” from March 1, 2009, to October 31, 2010. No explanation was provided regarding the discrepancies between the petitioner’s statements, the beneficiary’s résumé, and the experience letter regarding the dates of the positions held by the beneficiary. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho* at 591-92.

The petitioner also submitted a certificate from the [REDACTED]”<sup>1</sup> The certificate was dated October 10, 2003, in [REDACTED] and stated that the beneficiary was awarded a “Certificate of License in Arabic Language and Islamic Studies.” The certificate stated that “[t]he License has been legalized in the Ministry of Education and in the Ministry for Foreign Affairs of Libya.”

In the RFE issued on September 1, 2011, USCIS requested additional information and evidence about the petitioner’s requirements for the proffered position and “how the beneficiary meets those requirements.” In its letter responding to the notice, the petitioner listed its “criteria” for the position:

1. A four year degree from accredited Islamic University in theology or Islamic Studies.
2. Fluent in Arabic language.
3. Deep understanding of the Quran and Hadith.
4. To be able to teach religion to the members of our institution, there/ we [sic] fluency in English and Albania language is required.

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<sup>1</sup> Although not addressed by the petitioner or the director, the [REDACTED] appear to be the same organization with the difference in name being a matter of translation.

5. Good or excellent oratory skills to preach and hold Friday Khutbah (speech).
6. To be pious and follow all pillars of Islam as require

In the RFE issued on July 11, 2012, the director again requested additional documentation of the requirements for the position offered and documentation that the beneficiary met those requirements. The director noted that while the Form I-129 Supplement R and the beneficiary's résumé indicated that the beneficiary received a Bachelor's degree in Theology from [REDACTED] in Syria, the petitioner failed to submit evidence of that degree. Instead, the petitioner submitted a copy of a "Certificate of License in Arabic Language and Islamic Studies" from the [REDACTED] in Libya. The director stated that the certificate's issue date in 2003 conflicted with the beneficiary's assertion on his résumé that he was attending school in Syria from 1997 to 2003. The petitioner was instructed to resolve these discrepancies. The RFE also requested an advisory evaluation of the beneficiary's foreign educational credentials to demonstrate that the beneficiary "has met the petitioner's requirements for the professional religious position being offered, i.e., bachelor's degree from the [REDACTED]. Additionally, the petitioner was instructed to submit evidence of the beneficiary's work experience as listed on his résumé.

In an October 1, 2012 letter responding to the RFE, the petitioner stated that "[q]ualifications for position include minimally a Bachelors degree in Quran/Islamic Studies, plus knowledge of Quran and Islamic Studies." The petitioner submitted an affidavit from [REDACTED] identified as the imam of [REDACTED] Wisconsin. The affidavit described the definition, qualifications, and duties of an "Imam" within the Muslim religion. Mr. [REDACTED] stated in part:

Qualification: Just like other educational disciplines of life a person is considered an Imam once he graduates from a known institute of his country/area. Usually a person is admitted to a religious school once he graduates from high school at the age of around 15/16 or has memorized the holy Quran by heart.

Regarding the discrepancy in the beneficiary's education as noted by the director, the petitioner stated:

From 1997-2003 [the beneficiary] attended the [REDACTED] in Syria. The diploma is signed by the Lybian [sic] Education affairs because Ebu-Noor [sic] is part of the Tripoli branch. It is one university, but a certain branch ex. Arabic Languages is supported by the Lybian [sic] Education. Affairs and the diploma was [sic] issued from them. One university two departments. The diploma was received August 8, 2003.

The petitioner submitted no documentation to support its statements regarding [REDACTED] and its relationship to any educational entity in Libya. Furthermore, the beneficiary stated that he received a bachelor's degree in theology from [REDACTED] in Syria, not a license or degree in Arabic Language and Islamic Studies from the [REDACTED] in Libya. Finally, although counsel asserts that the diploma was received on August 8, 2003, the license submitted by the petitioner indicates it was issued on October 10, 2003. Going on record without supporting documentary evidence is 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)).

The petitioner submitted a "Degree Verification" certificate, dated "10.8.2003," from the "[REDACTED]" that included the beneficiary's transcript and an "Acknowledgement and Equivalence Certificate," dated "05.07.2012," from the "[REDACTED]" which stated:

It is certified the acknowledgement of the Diploma of Mr. [REDACTED] released by the [REDACTED] with a 4-year program, in Theology.

This Diploma is equivalent to the Scientific Master in the Republic of Albania.

Neither document references [REDACTED] or the fact that the beneficiary matriculated in Syria. The petitioner also submitted an Academic Equivalency Evaluation from [REDACTED] New York, finding that the beneficiary "attained the foreign equivalent of a four-year Bachelor of Arts Degree in Arabic and Islamic Studies." The evaluation stated that the beneficiary completed a "bachelor's-level program in Arabic Language and Islamic Studies at the [REDACTED] in Libya, culminating in his attainment of an equivalence certificate for a Degree in Theology from the [REDACTED]" The evaluation also stated that [REDACTED] determination was "based on the reputation of the academic programs under the auspices of the Ministry of Education and Science of Albany [sic], the number of years of coursework, the nature of the coursework, the grades attained in the courses, and the hours of academic coursework," and that it was also based on copies of original documents provided by the beneficiary.

Additionally, the petitioner submitted an excerpt "from the book: [REDACTED] Author: [REDACTED] Published: [REDACTED] [REDACTED] 2011. Page 143." The translated excerpt consists of a biographical paragraph about the beneficiary, which included the following:

[REDACTED]

The petitioner does not explain the significance of this publication or its status as an authoritative source of information. Regarding the beneficiary's work experience, the petitioner submitted a letter, dated July 3, 2012, from [REDACTED] [REDACTED] stating that the beneficiary was employed teaching religious subjects from

September, 2003, to August, 2010, and that he additionally served as imam at the school's mosque during the 2009-2010 school year.

In the RFE issued on February 12, 2013, the director requested documentation of the petitioner's recruitment efforts for an imam and an explanation of "the process that led you to choose the beneficiary." The director also stated that "USCIS is unable to discern the purpose" of the submitted affidavit from [REDACTED] and requested clarification on that issue. The RFE additionally instructed the petitioner to submit verifiable evidence that the [REDACTED] in Libya and the [REDACTED] in Syria are the same or related organizations.

In response to the RFE, counsel for the petitioner stated that the affidavit from [REDACTED] "was provided as an attestation [sic] of what an 'Imam' is and the general qualification and duties of an Imam." Regarding the beneficiary's education, counsel stated:

As mentioned in prior responses, Imam [REDACTED] [sic] has not attended any physical educational institution in Libya. The "Certificate of License in Arabic Language and Islamic Studies" was issued by the Faculty of Islamic Invitation in [REDACTED] Libya. Imam Hamja attended the [REDACTED] Syria which is connected, by sponsorship, with [REDACTED]

[REDACTED] is an international Islamic educational organization that sponsors students and other international Islamic Universities throughout the world. i.e. If a US University has a sponsorship program with a country's national or private university, the diploma or certificate is issued in the US University's name. Therefore, again, Imam [REDACTED] has never attended any educational institution in Libya and has only received a certificate in the name of the sponsoring [REDACTED]

Proof of his non-attendance in Libya and connection between the two universities is difficult to obtain at this time due to current turmoil in both nations.

The petitioner submitted no documentation of its efforts to obtain evidence of the relationship between the institutions. 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 Obaighena*, 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). Furthermore, the non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

In response to the request for documentation of the petitioner's recruitment efforts, counsel stated that such evidence was unavailable, as a previous posting on the petitioner's website had been since deleted and the petitioner has used a "word of mouth" recruitment effort.

In denying the petition, the director found that the petitioner submitted insufficient documentation of its recruitment efforts and the beneficiary's qualifications "as compared to other candidate(s)." The

director stated, "By not providing the evidence requested, USCIS cannot readily discern whether or not the petitioner or the beneficiary meet the minimum requirements under the regulations."

The regulations governing classification of nonimmigrant religious workers do not require a petitioner to conduct or document recruitment for the proffered position or to demonstrate that the beneficiary is more qualified than other candidates. Instead, the petitioner must document the religious denomination's standards for qualification as a minister and establish that the beneficiary meets those qualifications. 8 C.F.R. §§ 214.2(r)(3) and (10).

In the decision, the director also found that the petitioner "failed to provide an adequate explanation and failed to address the concerns raised by USCIS" regarding the beneficiary's educational credentials.

On appeal, counsel for the petitioner argues that the petitioner has provided a reasonable explanation as to why the beneficiary's degree was issued by an institution other than that listed on the petition and the beneficiary's résumé. Counsel states:

The USCIS also states in its decision that the Petitioner submitted no documentation to substantiate his attendance at the [redacted] Syria. This is not the case. The Petitioner submitted an excerpt from the book entitled [redacted] by the authors [redacted] and published in 2011 by [redacted] which states that the Beneficiary went to [redacted] Syria. It also mentions [redacted] in reference to these studies. The USCIS ignores this evidence entirely when it incorrectly states that no evidence was submitted. The USCIS also blithely dismisses the argument of the Petitioner that it is difficult to obtain evidence from Syria and Libya due to the strife in said countries ... It should also be pointed out that the Degree issued by the [redacted] is issued by both the [redacted] this is further evidence that supports the Petitioner's explanation concerning the links of the two institutions. The Beneficiary [sic] impeccable credentials, has worked as an Imam for years and was recommended by Imam [redacted] from the [redacted] He clearly qualifies for the position and a visa. It should be pointed out that the Albanian government accepted the degree as a four year degree in theology. In addition, the petitioner submitted an Academic Equivalency Evaluation that equated the degree to an equivalent in the United States to a Bachelor of Arts Degree in Arabic and Islamic Studies.

The petitioner has established that its requirements for the position of imam include a four-year degree in theology or Islamic studies from an accredited university. However, the petitioner has not resolved inconsistencies in the record regarding the beneficiary's educational credentials. The petitioner alleges that the beneficiary received a bachelor's degree in theology from [redacted] in [redacted] Syria. The beneficiary makes the same assertion in his résumé. Nonetheless, the certificate submitted to establish the beneficiary's degree indicates that he received a "Certificate of License in Arabic Language and Islamic Studies" following an examination by the [redacted] in

Libya, and that his license was “legalized in the Ministry of Education and in the Ministry for Foreign Affairs of Libya.”

The petitioner did not initially allege any relationship between [REDACTED] and the [REDACTED]. Although the petitioner later asserted that [REDACTED] in Syria is actually a branch of the [REDACTED] in Libya, it failed to provide evidence of this connection. The petitioner submitted a “degree verification” from the [REDACTED] along with the beneficiary’s curriculum. However, again, no reference was made to the beneficiary’s matriculation at or connection to [REDACTED]. Counsel asserts that the petitioner was unable to obtain proof of the affiliation between the two institutions because of turmoil in both countries. However, the petitioner asserted in response to the February 12, 2013, RFE, that “[t]he [REDACTED] is an international Islamic educational organization that sponsors students and other international Islamic Universities throughout the world.” Therefore, it is unclear why the petitioner was not able to obtain documentation about the nature of the sponsorship program from a source outside of Syria or Libya. Further, both the [REDACTED] and [REDACTED] performed equivalency evaluations regarding the beneficiary’s course of study. Neither evaluation supported the asserted connection between the universities.

Finally, although the petitioner repeatedly asserted that experience is a required qualification for the proffered position, the discrepancies in the evidence regarding the dates and positions held by the beneficiary, as discussed above, call into question the documentation submitted. Doubt cast on any aspect of the petitioner’s proof may, of course, 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.

The petitioner failed to establish the beneficiary’s qualifications for the proffered position.

The third issue to be discussed is whether the petitioner established 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. . . .

In Part 5 of the Form I-129 petition, "Basic Information About the Proposed Employment and Employer," the petitioner indicated that it would provide the beneficiary with salaried compensation of \$751.00 per week and non-salaried compensation in the form of "Standard health benefits." In the "Employer Attestation" portion of Supplement R, the petitioner described the beneficiary's proposed compensation as "a base salary of \$36,000 per year, plus standard health benefits." The petitioner indicated that the beneficiary would be its only employee. The November 28, 2010, employment contract, submitted with the petition, stated that the beneficiary would receive \$3,000 per month, would accrue one "health day" per month, would be reimbursed for professional expenses, and would be given paid time for "education, writing, etc." after two years of service.

In its June 24, 2011, letter accompanying the petition, the petitioner stated that it "does not file federal tax returns, including IRS Form 990," as it is not required to do so. The petitioner submitted a letter from its treasurer, dated December 7, 2010, stating that "[t]he annual balance of the organization is approximately \$85,000." The petitioner submitted a letter from Johnson Bank, dated June 17, 2011, stating that the petitioner has held an account since December 24, 2007, and has a "current account balance" of \$96,871.38. The petitioner also submitted a Form 1099-MISC, Miscellaneous Income, indicating that in 2009, it paid \$25,098.00 to [REDACTED] the petitioner's former Imam.

In the September 28, 2011 RFE, USCIS requested additional evidence of how the petitioner intends to compensate the beneficiary, including evidence of past compensation in the form of state quarterly wage reports for the last four quarters.

In response to the RFE, the petitioner submitted a copy of a deed showing ownership of its premises as well as evidence of satisfaction of its mortgage for the property. The petitioner submitted an unaudited statement of its revenue and expenses for 2011, indicating net income of \$87,166 for the year. The petitioner submitted a December 7, 2011, letter from Johnson Bank stating that the petitioner has a current account balance of "\$186,564.51 and has had an average balance of \$187,229.30 over the past 3 months." The petitioner submitted an additional copy of the 2009 Form 1099-MISC, as well as an uncertified Form 1096, Annual Summary and Transmittal of U.S. Information Returns, for 2009, indicating that the petitioner filed one form totaling \$25,098.00 for the year.

In the February 12, 2013 RFE, the director stated that the petitioner's descriptions of the proposed compensation contained inconsistencies. The director stated that \$751 per week, as listed on the petition, "does not equate to \$3,000 per month, or \$36,000 per year," as listed on the Supplement R and in the employment contract. The director also noted that the employment contract did not mention health benefits, but did include "fringe benefits, such as vacation days, sick days, paid time for the beneficiary to pursue his interest in education and writing, and reimbursement of professional expenses." The director instructed the petitioner to "provide an explanation for the variances in the salaried and non-salaried compensation."

In response, counsel for the petitioner stated:

The variances of the salaried and non-salaried compensation is [sic] a clerical error by the petitioner. The correct compensation that is offered for [the beneficiary] is

\$3,000.00 per month, which equates to a yearly salary of \$36,000.00 per year. The [petitioner] would obtain health benefits for the Imam and his family. I believe that the inconsistency of the prior responses is due in part to language capability and understanding as well as general miscommunication with the previous G-28 agent.

In denying the petition, the director found that the petitioner failed to resolve the inconsistencies regarding the proffered compensation. The director stated:

[I]n light that [the] petitioner submitted a Pastoral Contract, executed by both parties on November 28, 2010, which provides for other types of non-salaried compensation, the petitioner's response does not adequately provide any insight into the actual salaried and non-salaried compensation package for the proffered position. The petitioner did not submit any amendments to the Pastoral Contract, or other evidence to show that the beneficiary had been made aware of the changes and that he agreed to the new terms. As such, the petitioner failed to provide accurate information about its compensation package for the proffered position.

When a petitioner signs the petition, he or she is certifying that the petition and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. See 8 C.F.R. 103.2(a)(2).

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 Service requirements. [*Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998)].

On appeal, counsel for the petitioner states:

The USCIS makes a great deal of the fact that on form I-129 the compensation is listed as \$751.00 a week. Petitioner explains that this was a clerical error and the use of common sense would show this to be the case. A quick but ultimately inaccurate conversion of the \$3,000.00 a month figure would be to divide same by four which is \$750.00, this is a common mistake people make assuming only four weeks in a month despite their being odd additional days to said four weeks.

In response to the director's finding regarding discrepancies in proffered non-salaried compensation between the "Pastoral Contract" and the petition and accompanying letter, counsel notes the petitioner's previous assertion that the contract is outdated. Counsel also states that the proffered non-salaried compensation of health insurance is consistent in the petition, the Supplement R, and the June 24, 2011, letter accompanying the petition. Counsel argues that, unlike in *Matter of Izummi*, cited by the director, the petitioner has not attempted to make material changes to a petition already filed. Instead, counsel argues, the non-salaried compensation indicated in the petitioner's responses to the RFEs has been consistent with that listed on the petition.

Counsel's explanation regarding the inconsistent weekly salary listed on the petition is reasonable and consistent with the evidence. All other submissions have consistently listed the proffered compensation as \$3,000 per month or \$36,000 per year. With regard to the proffered non-salaried compensation, the Form I-129 petition, Supplement R, and accompanying letter were all created after the November 28, 2010, contract. Accordingly, the inconsistencies in the contract cannot be considered an attempt to make a material change to the terms of employment after filing. The petitioner has established that the intended compensation is \$36,000 per year as salaried compensation plus health insurance as non-salaried compensation. The director's findings on this issue will be withdrawn.

The final issue to be discussed is whether the petitioner established that the beneficiary had the requisite two years of membership in the petitioner's denomination immediately preceding the filing of the petition.

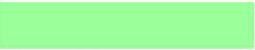
As cited previously, the regulation at 8 C.F.R § 214.2(r)(1)(i) requires the beneficiary to "[b]e a member of a religious denomination having a bona fide non-profit religious organization in the United States for at least two years immediately preceding the time of application for admission." The regulation at 8 C.F.R. § 214.2(r)(3) provides the following definitions:

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

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

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

In denying the petition, the director stated that evidence submitted in response to the July 11, 2012, RFE indicated that the beneficiary worked as a "manager for an infrastructure project" after 2006, rather than as an imam as asserted. The director also discussed bank records submitted by the



petitioner and found that the petitioner failed to establish the beneficiary's employment after 2010. The director stated:

In turn, the lack of employment supports the contention that the beneficiary was not employed as a religious worker during [the] regulatory period, requiring the religious worker to have been a member in the religious denomination for at least two years immediately preceding the time of application for admission.

Unlike the regulations governing classification as a special immigrant religious worker, the regulations governing classification as a nonimmigrant religious worker do not require that the beneficiary have been performing religious work during the two years immediately preceding the filing of the petition. *Compare* 8 C.F.R. §§ 204.5(m)(4) and (11). Instead, the petitioner must demonstrate that the beneficiary was a member of the same type of religious denomination as the petitioning organization during that time. The petitioner has established that the beneficiary was a member of the Muslim religion during the two years prior to the filing of the petition. Accordingly, the director's findings on this issue will be withdrawn.

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). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.