C1

U.S. Department of Justice

Immigration and Naturalization Service

Identification data deleted to prevent clearly unwarranted invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: WAC-99-165-51343 Office: California Service Center Date: 28 FEB 2002

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C)

IN BEHALF OF PETITIONER: [redacted]

Public Copy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is described as a school. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), in order to employ her as a teacher at a salary of $1,500 per month.

The director denied the petition finding that the beneficiary's claimed volunteer work at the school was insufficient to satisfy the requirement that she had been continuously carrying on a religious occupation for at least the two years preceding the filing of the petition.

On appeal, counsel for the petitioner submitted a brief arguing that the regulations do not require that the prior experience have been in a paid capacity.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 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;
>
> (ii) seeks to enter the United States--
>
> (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
>
> (II) before October 1, 2003, 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) before October 1, 2003, 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 Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year

period described in clause (i).

The petitioner in this matter is described as a school affiliated with an Islamic mosque. The beneficiary is described as a native and citizen of Israel who was last admitted to the United States on July 6, 1997, as a B-2 visitor. The record reflects that she remained beyond her authorized stay and has resided in the United States since such time in an unlawful status. The petitioner, however, indicated on the petition form that the beneficiary has never been employed in the United States without authorization.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

The first issue is whether the petitioner has established that the beneficiary has had the requisite two years of continuous work experience in a qualifying capacity.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

> All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on May 20, 1999. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in a religious occupation for at least the two years since May 20, 1997.

The petitioner testified that the beneficiary has been a volunteer teacher at its school since entry into the United States in July 1997. It was also stated that she was a teacher at a similar school in Israel.

The director found that a claim indicating past voluntary service was insufficient to establish that the beneficiary had been continuously carrying on a religious occupation for the minimum of two years. Counsel's argument that the regulations do not prohibit voluntary service from satisfying the requirement, and thereby allow such a claim to qualify, is not persuasive.

The statute and its implementing regulations require that a beneficiary had been continuously carrying on the religious occupation specified in the petition for the two years preceding filing. The regulations are silent on the question of volunteer work satisfying the requirement. The pertinent regulations were drafted in recognition of the special circumstances of some religious workers, specifically those engaged in a religious

vocation, in that they may not be salaried in the conventional sense and may not follow a conventional work schedule. The regulations distinguish religious vocations from lay religious occupations. 8 C.F.R. 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. While such persons are not employed *per se* in the conventional sense of salaried employment, they are fully financially supported and maintained by their religious institution and are answerable to that institution. The regulation defines lay religious occupations, in contrast, in general terms as an activity related to a "traditional religious function." *Id*. Such lay persons are employed in the conventional sense of salaried employment. The regulations recognize this distinction by requiring that in order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of salaried employment and will not be dependent on supplemental employment. See 8 C.F.R. 204.5(m)(4). Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, the Service interprets its own regulations to require that, in cases of lay persons seeking to engage in a religious occupation, the prior experience must have been full-time salaried employment in order to qualify as well.

Accordingly, the director's determination that the mere claim that the beneficiary had been a volunteer at the petitioner's school was insufficient to establish that she had been continuously carrying on a religious occupation is affirmed.

In addition, it is noted that the petitioner provided no proof of the beneficiary's alleged entry into the United States in July 1997, such as her travel documents. Merely going on record without supporting documentary evidence, is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). The petitioner has failed to establish the beneficiary's presence in the United States for the period claimed. This further detracts from the petitioner's claim of sufficient qualifying experience.

Moreover, in a letter dated November 1, 2000, counsel refused to comply with the director's request for proof of the beneficiary's means of financial support in the United States stating that the request was immaterial. Contrary to that claim, it is incumbent on the petitioner to provide a detailed description of the alien's employment history. Absent a detailed description of the beneficiary's employment history in the United States, supported by corroborating documentation such as travel documents and tax documents, the Service is unable to conclude that the beneficiary had been engaged in any particular occupation, religious or otherwise, during the two-year qualifying period.

If the director asks the petitioner for additional evidence, and the petitioner does not provide the requested evidence within the allotted time, the Administrative Appeals Office (AAO) will not reverse a decision denying the petition unless the evidence that was already in the record so clearly establishes that the intended beneficiary qualifies for the classification sought that a reasonable factfinder would have to conclude that the evidence that was already in the record clearly satisfies the burden of proof. Cf. INS v. Elias-Zacarias, 502 U.S. 478 (1992). The evidence originally submitted at the time of filing was not sufficiently detailed that a reasonable adjudicator would have to have concluded that the alien beneficiary is eligible for special immigrant classification.

A petitioner also must establish that it is a qualifying religious organization as defined in this type of visa petition proceeding.

8 C.F.R. 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

> (i) Evidence that the organization qualifies as a nonprofit organization in the form of either:
>
> (A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations; or
>
> (B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3).

The petitioner must either provide verification of individual exemption from the U.S. Internal Revenue Service (IRS), proof of coverage under a group exemption granted by the IRS to the denomination, or such documentation as is required by the IRS. Such documentation to establish eligibility for exemption under section 501(c)(3) includes: a completed Form 1023, a completed Schedule A attachment, and a copy of the articles of organization showing, *inter alia*, the disposition of assets in the event of dissolution.

To address this requirement, the petitioner submitted a letter from the Internal Revenue Service (IRS) showing the tax exempt status of the Islamic Learning & Practicing Center, Inc. However, the petitioner has not documented its affiliation with this entity or shown that it is included in the organization's tax exemption. A school, even when affiliated with a religious organization, is usually separately incorporated and is not considered a qualifying employer for the purpose of special immigrant classification. Accordingly, the petitioner has failed to establish that it is a

qualifying tax exempt religious organization.

It must also be noted that positions at an entity that does not qualify as a religious organization cannot be considered a religious occupation pursuant to 8 C.F.R. 204.5(m)(2). Therefore, any past experience or proposed employment at such an entity cannot be considered qualifying for the purpose of special immigrant classification.

A petitioner must also demonstrate its ability to pay the proffered wage.

8 C.F.R. 204.5(g)(2) states, in pertinent part, that:

> Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

The petitioner has not furnished its annual reports, federal tax returns, or audited financial statements. Therefore, the petitioner has not satisfied the documentary requirement of this provision.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.