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U.S. Department of Justice

Immigration and Naturalization Service

Identifying 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: [redacted] Office: Vermont Service Center Date: MAR 25 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 that 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 that 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. An appeal was dismissed by the Associate Commissioner for Examinations, by and through the Director, Administrative Appeals Office ("AAO"). The matter was remanded to the AAO pursuant to an order of the U.S. District Court for the District of Columbia, in [redacted] Pursuant to the order of the court, the prior decision of the AAO will be withdrawn and the appellate proceeding will be reopened.

The petitioner is a New York nonprofit corporation. 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 "religious teacher" at a salary of $20,000 per year.

The Form I-360, Petition for Amerasian, Widow or Special Immigrant, was filed on December 7, 1998. In a decision dated July 28, 1999, the center director denied the petition on the grounds that the petitioner failed to establish that the beneficiary had had two years of continuous experience in a religious occupation as required by 8 C.F.R. 204.5(m)(1).

Counsel for the petitioner timely filed a Form I-290B, Notice of Appeal, with a written brief arguing that ample documentation was submitted to establish that the beneficiary has the requisite two years of continuous work experience. Additional documentation was submitted.

In a decision dated August 3, 2000, the AAO dismissed the appeal finding that the record revealed that the petitioner was a nonprofit charitable organization and was not a qualifying religious organization for the purpose of special immigrant classification as set forth at 8 C.F.R. 204.5(m)(3)(i). The AAO decision then stated that since the petitioner was not a qualifying religious organization, the grounds for denial cited by the center director need not be addressed.

Pursuant to a court order based on the petitioner's Unopposed Motion for Remand and Stay of Litigation in the above-noted litigation, counsel for the petitioner submitted a supplemental brief, received by the AAO on January 23, 2002, arguing that the petitioner is a charitable organization organized and operated for religious purposes and should be considered a qualifying religious organization for the purpose of special immigrant classification.

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, the Islamic Circle of North America, Inc. ("ICNA"), is a nonprofit organization incorporated in the State of New York on November 10, 1987. Its Certificate of Incorporation states that the purpose of the corporation is:

To promote the Islamic teachings in the State of New York and the U.S.A. by educating the general public as to the beliefs of said religion.

To establish institutions for practice of religious and social activities.

In a letter dated May 17, 1999, an official of the petitioner stated that it is organized "to provide religious, social and moral education to its members and peoples who have interest in Islam." The official further stated that their members "basically" volunteer their time and that the ICNA has chapters "all over North America" with a total membership of 30,000. It was further stated that ICNA Headquarters employs six religious workers and three non-religious workers.

It is noted that the petitioner, located in Jamaica, New York, did not make clear whether it was the "headquarters" referred to in the May 17, 1999 letter or whether it was a member chapter of the

organization. If the beneficiary is to be employed as one of the employees at the national headquarters of the organization, it has not been established that such administrative duties would be considered a qualifying religious occupation. If she is to be employed at a member chapter, it has not been established that the chapters maintain any permanent salaried employees.

Furthermore, the petitioner failed to provide a description of its national organization that included the number of member chapters, the manner of their organization, and the degree of control exercised by the headquarters in matters such as the control of assets, personnel, and finances. Absent an adequately detailed description of the proposed employer and the proposed employment, the Service is unable to consider a favorable determination regarding an employment-based visa petition.

The beneficiary is a forty-two-year-old married native and citizen of Pakistan with two dependent children. She was last admitted to the United States on June 30, 1998, as a B-2 visitor, with an authorized stay until December 29, 1998. Her current immigration status is unknown. The petitioner indicated on the petition form that the beneficiary has never been employed in the United States without authorization.

The record has been reviewed *de novo*. In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

A petitioner 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:
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> (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).

To address this requirement, the petitioner submitted a letter from the Internal Revenue Service ("IRS") dated December 6, 1988, showing that it was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code ("IRC"). This letter

indicates that the basis for this status is that the petitioner is an organization described in section 170(b)(1)(A)(vi) of the IRC. This section reads as follows:

> (vi) an organization referred to in subsection (c)(2) which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from a governmental unit referred to in subsection (c)(1) or from direct or indirect contributions from the general public.

IRC section 170(c)(2), referred to above, lists the types of corporations or foundations to which charitable contributions can be made. It reads, in pertinent part, as follows:

> (c) Charitable contribution defined. For purposes of this section, the term "charitable contribution" means a contribution or gift to or for the use of--
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> * * *
>
> (2) A corporation, trust, or community chest, fund, or foundation--
>
> (A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States;
>
> (B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals....

Thus, while the IRS will grant tax-exempt status to organizations operated for religious purposes under section 170(b)(1)(a)(vi), clause (vi) covers not only organizations operated for religious purposes but also organizations formed for charitable, scientific, literary, or educational purposes, or to foster amateur sport or to prevent cruelty to children or animals. This section refers to entities that receive a substantial part of their support in the form of contributions from publicly supported organizations, from a governmental unit, or from the general public. An organization granted tax-exempt status under section 170(b)(1)(a)(vi) of the IRC need not be operated exclusively for religious purposes. To satisfy 8 C.F.R. 204.5(m)(3)(i), the petitioner must establish that its tax exemption is based on its status as a religious

organization, not just a publicly supported organization. Cf. section 170(b)(1)(A)(i) IRC. Therefore, its tax exemption may not be based on section 170(b)(1)(A)(vi) of the IRC.

In the supplemental brief dated November 5, 2001, counsel stated that charitable contributions, as defined at section 170(c)(2)(B) of the IRC, can be made to entities organized and operated, *inter alia*, "exclusively for religious purposes." Counsel argued that entities, including the petitioner, classified under section 170(b)(1)(A)(vi) of the IRC can be organized and operated exclusively for religious purposes and should be considered qualifying religious organizations for the purpose of section 101(a)(27)(C)(ii)(III) of the Act.

The argument is not persuasive. Both the statute and the implementing regulation rely on the IRS determination of tax exempt status in defining a qualifying religious organization. 8 C.F.R. 204.5(m)(3)(i)(B) relies on IRC section 501(c)(3) "as it relates to religious organizations." There are several classes of nonprofit organizations eligible for tax exemption under section 501(c)(3) of the Internal Revenue Code. Only organizations classified, or classifiable, as a "church"[1] pursuant to sections 509(a)(1) and 170(b)(1)(A)(i) of the IRC are considered as relating to religious organizations for the purpose of special immigrant religious worker classification.

As reflected on IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, and its accompanying schedule A attachment, there are several classes of nonprofit organizations eligible for tax exemption under section 501(c)(3) of the Internal Revenue Code and very specific criteria for tax exempt recognition as a "church" under 170(b)(1)(A)(i) of the IRC. While an organization classified under 170(b)(1)(A)(vi) may be formed for religious purposes, it need not be. The Service interprets its own regulations that only organizations classified, or classifiable, as "churches" pursuant to sections 509(a)(1) and 170(b)(1)(A)(i) of the IRC are qualifying religious organizations for the purpose of special immigrant religious worker classification. While counsel disputes the Service's interpretation of its own regulation, he failed to furnish any citation to authority showing that the interpretation is incorrect as a matter of law.

Furthermore, the petitioner's own Certificate of Incorporation states that its purposes include general educational and social activities. This does not support counsel's claim that the petitioner is, in fact, organized and operated exclusively for

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[1] The term "church" is the term used in Part III, #9 on IRS Form 1023.

religious purposes.

Based on the above, it is concluded that the petitioner has not established that it is tax exempt as a religious organization pursuant to 8 C.F.R. 204.5(m)(3)(i). Therefore, it is ineligible to receive special immigrant classification for any prospective alien employees.

A petitioner also must establish that the beneficiary had had the requisite two years of continuous experience in a religious occupation.

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 December 7, 1998. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation for at least the two years since December 7, 1996.

To demonstrate the beneficiary's qualifications, the petitioner asserted that the beneficiary was educated in Pakistan and was awarded a Master's degree in Islamic studies in 1986, a Master's degree in Arabic in 1985, a "diploma" in Arabic in 1984, a Bachelor's degree in education in 1989 [sic], and a Bachelor's degree in Arts in 1982. It was further noted that she received her secondary school certificate in 1979. It was stated that the beneficiary was employed as a religion teacher by an organization in Pakistan from 1990 to 1993.

To address the prior experience requirement, the petitioner originally submitted a letter dated October 4, 1998, from an official of the [redacted] stating that the beneficiary served in its [redacted] as head of its "ladies wing" from March 1993 to June 1998. The letter stated that under the beneficiary's leadership the ladies wing was transformed from "just a weekly study circle into a great institution."

The center director found that this letter contained insufficient detail to establish that the beneficiary was continuously carrying on a religious occupation from at least December 1996 through December 1998. The director also noted that the petitioner failed to demonstrate whether the beneficiary was a volunteer or an employee of the [redacted] and that it failed to submit proof of employment such as payroll or tax records as was requested in a

written notice dated April 28, 1999.

On appeal, counsel submitted another letter from the Society dated August 10, 1999, stating that the beneficiary was hired in March 1993 and was "a full time religious worker until June 1998." The official stated that the beneficiary was a permanent salaried full-time employee working six days per week, forty-eight hours per week, at a rate of remuneration of 380 per month which the official estimated was equivalent to approximately US$12,000 per year.

On review of the evidence of record, it is concluded that the petitioner has failed to overcome the director's concerns. It has not been demonstrated that the beneficiary's claim of foreign employment by the establishes that she was continuously carrying on a religious occupation for the requisite two-year period.

First, the Service has no means to determine whether the ladies wing of the in is affiliated with the petitioner's religious denomination.[2] There is no documentation to indicate whether the is a mosque, or some other form of entity whose employees are not engaged in religious occupations for the purposes of this proceeding.

Second, the two letters submitted by the petitioner do not contain a sufficiently detailed description of the claimed employment for the Service to conclude that the beneficiary was engaged in a qualifying religious occupation. The official of the Society did not explain when the "ladies wing" was transformed from a "weekly study circle" into a program that could reasonably employ a full-time "head." The Service is not persuaded that the head of a weekly study circle could be employed in a full-time capacity in a religious occupation. Nor did the official provide a description of the nature of the program the beneficiary headed, the number of participants, or what her duties were that allegedly transformed the weekly study circle into a "great institution." Absent an overview of the organization's operations and a detailed description of the beneficiary's duties, a mere assertion that she was employed as head of one of its programs and had transformed that program is insufficient to establish that she was engaged in a religious occupation.

Third, the official of the also stated that the

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[2] Without evidence that the beneficiary's former employer was a member of the petitioner's denomination, she cannot satisfy the two-year denominational membership requirement of 8 C.F.R. 204.5(m)(3)(ii)(A).

beneficiary was paid in cash, implying that no objective corroborating documentation such as payroll or tax records were available to corroborate the claim that the beneficiary was employed and was paid at the rate of the equivalent of $12,000 per year. Simply making assertions 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).

Fourth, it is noted that the beneficiary's passport, issued in Bahrain on January 8, 1994, lists her occupation as "housewife," rather than teacher. This tends to contradict the petitioner's testimony that the beneficiary was a full-time teacher since March 1993, performing that function as her occupation.

Upon a review of the record, it cannot be concluded that the two letters relied on by counsel are sufficient to establish that the beneficiary was continuously carrying on a qualifying religious occupation from at least December 7, 1996 through the date she entered the United States on June 30, 1998.

Finally, there remains the time period from the beneficiary's admission into the United States on June 30, 1998, to the date the petition was filed on December 7, 1998. This period constitutes approximately five months of the twenty-four-month qualifying period. The petitioner failed to advance any claim or submit any evidence that the beneficiary was continuously engaged in a religious occupation during this period in the United States. Even if it was established that the beneficiary was engaged in a religious occupation abroad from December 1996 to June 1998, the break in employment from June 1998 to December 1998 is clearly interruptive of her having been carrying on such work "continuously" as required by section 101(a)(27)(C)(iii) of the Act and 8 C.F.R. 204.5(m)(1).

In addition, as noted by the director, even if the petitioner had raised a claim that the beneficiary was a volunteer at its facility during the five-month period in the United States, the Service holds that lay persons who donate voluntary services to their religious organization, even with a qualifying tax-exempt "church," are not engaged in a religious occupation and that such voluntary activities do not constitute qualifying work experience for the purpose of an employment-based special immigrant visa petition.[3]

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[3] An alien with at least two years membership in a religious denomination may qualify for nonimmigrant R-1 classification under section 101(a)(15)(R) of the Act without a showing of prior work experience. For special immigrant classification under section 101(a)(27)(C) of the Act, the alien must also establish at least two years of experience in the position being offered.

Here, the petitioner failed to provide any indication of the beneficiary's actual occupation, if any, for the five-month period in the United States prior to the filing of the visa petition.

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 decision dated August 3, 2000 is withdrawn; the appeal is dismissed.