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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

AUG 21 2003

File: [redacted] Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant 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)

ON BEHALF OF PETITIONER:

[redacted]

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a mosque. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as an imam. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as an imam immediately preceding the filing date of the petition.

On appeal, the petitioner attempts to explain discrepancies in the record, and asserts that the beneficiary worked as claimed.

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 regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious

denomination which has a bona fide nonprofit religious organization in the United States." The regulation indicates that the "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."

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

> (ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:
>
> > (A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on August 3, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as an imam throughout the two-year period immediately preceding that date.

The beneficiary arrived in the U.S. on September 15, 2000, less than a year before the petition's filing date. Therefore, the petitioner can establish two years of continuous employment only if it can produce evidence of the beneficiary's employment overseas from August 1999 to September 2000.

Mohammed Golam Mustafa, president of the petitioning mosque, states:

> [The beneficiary] has been volunteering his services as an Imam continuously since September of 2000 for the petitioning organization. Before that, he was working as an Imam for Al-Hassan Jame Masjid in the state of Qatar from August 1994 until September 2000 when he left the country.

Abdulla Khalef, president of the Masjid Committee at Al-Hassan Jame Masjid, Qatar, affirms that the beneficiary "worked as an Imam for our Masjid from August 1994 until September 2000." The letter does not specify the beneficiary's work hours.

The petitioner's initial submission includes a copy of the beneficiary's passport. The passport, issued June 1, 1998, identifies the beneficiary's occupation as "business." Because this information appears to conflict with the claim that the beneficiary had worked as an imam since 1994, the director requested additional information from the petitioner. The director also asked why the beneficiary is still in the U.S., when he was issued a visa solely to visit a relative.

In response, counsel states "[b]esides working as an Imam the beneficiary has his own business in Bangladesh and the wife of the beneficiary is taking care of the business." Counsel asserts that

the beneficiary's wife "basically looks after the business," but because the beneficiary is a joint owner of the business, he "mentioned his profession as business while applying for the passport." Counsel adds that the beneficiary had originally traveled to the U.S. to visit a relative, but while here, he became involved with the petitioner which "was badly in need of a priest who can look after daily routine prayers."

Counsel offered no documentary evidence to support the above claim. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The director denied the petition, stating that counsel's explanation is not persuasive. The director also observed that the beneficiary "has remained in the U.S. to date, apparently illegally." The subsequent appeal bears the signature of an official of the petitioning entity; there is no indication that counsel was involved in the preparation or submission of the appeal.

On appeal, Mr. Mustafa asserts that the beneficiary has maintained legal status in the United States, having applied for an extension of his B-2 nonimmigrant status in March 2001. The documentation submitted shows that the beneficiary submitted the application, but nothing shows that the application was approved. At any rate, unlawful presence would be more of a concern at the adjustment or visa application stage rather than the petition stage. The director's observation that the beneficiary is in the U.S. "apparently unlawfully" was not a ground for denial.

Mr. Mustafa asserts that the beneficiary has accumulated the required work experience, and that his "profession appeared as 'business' in all his previous passports. This is a general term used frequently by the passport authorities of Bangladesh, which has no significance to what actually the passport holder does or performs." The petitioner submits copies of the beneficiary's older, canceled passports, all of which identify the beneficiary's profession as "business." Mr. Mustafa repeats the claim that the beneficiary owns a business in Bangladesh, and Mr. Mustafa contends that when the beneficiary obtained his most recent passport in 1998, he "did not appreciate the need for changing the [designation] to Imam."

The petitioner's explanation is still entirely unsupported by documentary evidence. 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. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Simply 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).

Mr. Mustafa states "[w]e have given a letter on June 25, 2001 stating that the beneficiary has been a full-time employee of our Mosque at a weekly salary of $350.00." The petitioner's letter of June 25, 2001, submitted with the initial filing, does not state that the beneficiary "has been a full-time

employee" earning "a weekly salary of $350.00." Rather, the letter states that the beneficiary "*will be* paid a weekly salary of $350" (emphasis added). The petitioner's letter of June 25, 2001 also indicates that the beneficiary "has been *volunteering his services* as an Imam continuously since September of 2000." The initial letter thus indicates that the beneficiary is an unpaid volunteer who will, at some point in the future, begin to receive a weekly salary. Counsel's contradictory claim on appeal raises further questions of credibility. The petitioner submits no tax records, pay stubs, canceled checks, or other evidence to show that the petitioner has in fact been paying the beneficiary "a weekly salary of $350.00," and if the petitioner has not been paying such a salary, then the assertion to the contrary is simply false.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Com. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Com 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and

religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and salaried. To hold otherwise would be contrary to the intent of Congress.

Review of the record reveals an additional issue. 8 C.F.R. § 204.5(g)(2) states in pertinent part:

> *Ability of prospective employer to pay wage.* 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 proffered 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 copies of annual reports, federal tax returns, or audited financial statements.

The above-cited regulation at 8 C.F.R. § 204.5(g)(2) states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation.

In this instance, the petitioner has not submitted any of the required types of evidence. The petitioner has submitted only bank statements, which do not provide a complete, reliable picture of the petitioner's financial status.

The petitioner has offered inconsistent statements as to whether the beneficiary has been paid for his work at the mosque. If the beneficiary was an unpaid volunteer as originally claimed (and there is no documentation at all to prove otherwise), then he would appear to have been dependent on income from his business. The fact that the beneficiary repeatedly identified his occupation as "business" on official government documents supports the finding that the beneficiary's primary means of support is through business rather than through his activities as an imam. These government documents (i.e. the passports) tend to indicate that the beneficiary did not consider himself to be, first and foremost, a religious worker prior to his attempt to secure immigration benefits as a religious worker.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.