C1

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

PUBLIC COPY

[redacted]

File: [redacted] Office: NEBRASKA SERVICE CENTER Date: AUG 22 2003

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)

ON BEHALF OF PETITIONER: [redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 immigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a foundation. 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), to perform services as an imam. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for the two years immediately preceding the filing date of the petition.

On appeal, counsel submitted a statement and indicated that a brief would be submitted within 30 days from the date the appeal was filed. To date, no brief or additional evidence has been submitted. Therefore, the record will be considered complete.

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).

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

> 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 alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or 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. 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.

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

The sole issue raised by the director in this proceeding is whether the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing date of the petition.

The petition was filed on January 26, 2001. Therefore, the petitioner must establish that the beneficiary was working continuously as a religious worker from January 26, 1999 until January 26, 2001. The petitioner indicated on Form I-360, Petition for Amerasian, Widow, or Special Immigrant, that the beneficiary last entered the United States on June 30, 1990. A poor facsimile of a Form I-94, Departure Record, and the visa page of the beneficiary's passport, indicate that the beneficiary entered the United States in March 1990, at Chicago, Illinois, as a non-immigrant F-1 student attending the University of Tennessee, Martin, Tennessee. A copy of a Form I-797, Notice of Decision, indicates that the beneficiary also was issued an approval notice on November 22, 1994, to perform work as an H-1B, Temporary Worker, for the Global Chemical Corporation, Chicago, Illinois, from November 17, 1994 to July 31, 1996. Part 4 of the Form I-360 submitted by the petitioner indicates that the beneficiary is under exclusion or deportation [now removal] proceedings. No further explanation of this is included in the record. The

petitioner has failed to indicate if the beneficiary has ever worked in the United States without permission.

In a letter dated January 9, 2002, the petitioner stated that the beneficiary had been continuously working as a salaried imam from January 26, 1999 to the present, and that duties of the position consist of providing the necessary spiritual guidance and counseling to the youth of the mosque. In a letter dated June 31 [sic], 2001, however, the petitioner indicated that the position of imam, as offered to the beneficiary, included such duties as: leading daily prayers (held five times a day) and preparing and giving lectures, among other duties identified. The petitioner also submitted Internal Revenue Service Forms 1099-Misc, Miscellaneous Income, for 1999 and 2000, indicating the beneficiary as a "nonemployee," with an income for both years listed as $15,000.

In various letters submitted in support of the petition, the record indicates that the beneficiary completed three courses in Islamic Studies at the University of Jordan on December 10, 1991, and that he also served as a volunteer imam from 1984 until 1990.

In a letter dated January 16, 2001, the secretary general of the Arab American Educational Council and Almuharjireen Mosque and School, Chicago, Illinois, stated that the beneficiary "provided numerous hours of volunteer work in social counseling, youth program services and Jumaa mass prayers as a volunteer Imam" from 1994 to the filing date of the petition. It is noted that this work began during the same year that the beneficiary began his employment with the chemical corporation.

In a letter dated June 31 [sic], 2001, the petitioner stated that the beneficiary "has been continuously working full time as an Imam" from January 26, 1999 to the present. The relationship between the Arab American Educational Council and Almuharjireen Mosque and School, and the petitioner has not been established, nor has the beneficiary's work as an imam at the two different sites been satisfactorily explained.

On appeal, counsel states that: all documentation pertaining to the beneficiary's eligibility for the benefit sought has already been submitted; the beneficiary has been a full-time, paid religious leader for the two years preceding the filing date of the petition; and, the decision by the director "equating an unpaid lay leader, with an educated, paid religious leader is without basis and degrading." Counsel presents no other evidence or statements. 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 1990).

Although the record does list some duties of the beneficiary, it

does not provide a comprehensive description of the beneficiary's activities during the two-year period immediately preceding the filing date of the petition. The petitioner has not provided sufficient evidence to establish that the beneficiary was continuously performing the duties of a qualifying religious vocation or occupation throughout the two-year period immediately preceding the filing date of the petition. Therefore, the decision of the director is affirmed and the petition is denied.

Beyond the decision of the director, the petitioner has not established that it has extended a qualifying job offer to the beneficiary, as one set of job duties included in the record identified the scope of youth counseling as the beneficiary's sole duty, while another submission indicated that the beneficiary is performing the entire gamut of duties of an imam. In addition, the petitioner has not established that it has had the ability to pay the beneficiary the proffered annual wage of $35,528.48, since the filing date of the petition as required under 8 C.F.R. § 204.5(g)(2). 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 any of the required evidence to satisfy the regulatory requirements of 8 C.F.R. § 204.5(g)(2). As the appeal will be dismissed for the reason cited above, these issues need not be examined further.

Discrepancies encountered in the petitioner's submissions have not been explained satisfactorily. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988).

In reviewing an immigrant visa petition, the Bureau must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

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.