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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]

JUL 02 2003

File: EAC 01 192 56209 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 religious educational center. 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 a Quranic instructor and muezzin. The director determined that the petitioner had not established that the beneficiary had worked, and continued to work, in a qualifying religious occupation. The director also determined that the petitioner had not established the extent of training necessary for the beneficiary's occupation, or that the beneficiary had received the required training.

On appeal, the petitioner submits new letters and copies of previously submitted documents.

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 April 27, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a Quranic instructor and muezzin from April 28, 1999 to April 27, 2001. In a letter accompanying the initial petition, [redacted] vice president of the petitioning entity, states:

> [The beneficiary] came to the U.S. on August 11, 2000 under an R-1 [nonimmigrant visa] and since that time has been continuously performing traditional religious duties on a full-time basis such as making the daily five Prayer calling and teaching Holy Quran to children and adults. Since his arrival in the U.S., he has been teaching Holy Quran to our children. . . .
>
> [The beneficiary] will be responsible for Prayer Calling for the daily five prayers and in the absence of our Imam (Muslim Priest) he will lead the prayers. In addition, [the beneficiary] will hold Holy Quran classes as per the following schedule:
>
> - Teaching of Holy Quran daily for one hour immediately after Fajr prayer
> - Teaching of Holy Quran daily for one and one-half hour daily between Maghrib and Isha
> - Teaching of Holy Quran on Saturday and Sunday from 10:00 am to after 1:00 pm
> - Explanation of Holy Quran on Saturday and Sunday from 8:00 pm to 9:30 pm
> - Recitation of Holy Quran every Fr9iday from 6:00 pm to 7:30 pm. . . .
>
> Please note that [the beneficiary] was attending Islamic college for the immediate past three years prior to his arrival in the U.S. under R-1 category. Prior to completing this three-year college, he completed a seven-year program in Islamic

> studies and Arabic in a religious ministerial school called Al Azhar Mahmoudea, Egypt. The total ten-year education that he has thus far completed has prepared him well to perform the duties as a Muezzin (Prayer Caller), religious instructor etc.
>
> Please note that the duties of an Islamic Studies instructor as outlined above are traditional religious functions above those performed routinely by our members. In order to perform the duties described above, the religious instructor must be a Muslim by faith [and] have the requisite educational background and experience.
> . . .
>
> [The beneficiary] has been engaged continuously in his professional religious capacity for the immediately preceding ten years and continuing to this date.

In the above letter, [redacted] indicates that the beneficiary "has been engaged continuously in his professional religious capacity for the immediately preceding ten years," i.e. from 1991 to 2001. But M[redacted] also indicates that the beneficiary had just completed three years of college, preceded by "a seven-year program in Islamic studies and Arabic." At the time of filing, the beneficiary had just reached the age of 25, meaning that ten years prior to the filing date, he was fifteen years of age.

The director instructed the petitioner to submit further evidence, including documentation to establish the minimum job requirements and to show the beneficiary's continuous employment in a religious occupation during the two years immediately preceding the filing of the petition. In response, [redacted], secretary of the petitioning entity, essentially repeats the assertions in [redacted] earlier letter. Mr [redacted] repeats the claim that the beneficiary "has been engaged continuously in his professional religious capacity for the immediately preceding ten years," while also repeating the assertion that the beneficiary was a student during that same ten-year period. Neither Mr [redacted] nor Mr [redacted] claims that the beneficiary was employed in any capacity while the beneficiary was a student.

[redacted] Imam of the petitioning entity, certifies that the beneficiary "is qualified to be Muezzin and Quranic Instructor on [a] professional basis. [The beneficiary] possesses a High School Diploma and he has completed three academic years at Al-Azhar University in Egypt."

The petitioner submits documentation from Al-Azhar Secondary College of Al-Mahmoudiah, indicating that the beneficiary first enrolled at the school in 1986, and graduated with a high school diploma in 1996.

The petitioner also submits a "Verification of College Enrollment," dated April 12, 2001, from Al-Azhar University's College of Islamic and Arabic Studies in Desouq, Egypt, indicating that the beneficiary "is enrolled in this College in the fourth year in the major of the Arabic Language for the academic university year of 2000/2001." The document states that "the student has been studying the religious and Arabic sciences as well as the Islamic Culture and Legal Culture during

those years (three years)." As noted above, [redacted] had referred to the beneficiary's "completing this three-year college." The documentation from the college, however, does not indicate that the beneficiary's studies were complete after three years. Rather, the document indicates that the beneficiary "is enrolled . . . in the fourth year," despite the fact that the beneficiary left Egypt in August 2000 and was therefore unable to attend classes during the 2000-2001 academic year for which he was enrolled. The letter from Al-Azhar University does not indicate that the beneficiary was employed, full-time or otherwise, in a religious occupation or in any other field, while studying there.

The director denied the petition, citing a lack of "[o]fficial Islamic Church documents relating to the religious requirements for a Quranic instructor . . . to show [that] training is needed and evidence . . . to show [the beneficiary] received the necessary training." Therefore, "[t]he record does not establish that the beneficiary has been and will be employed in a religious occupation." The director also stated that the petitioner's "supporting evidence must specifically demonstrate that the qualifying religious work has been and will be full-time, and provides the number of hours per week which have been and will be spent performing the religious work."

On appeal, the petitioner submits copies of previously submitted documents which, counsel asserts, "clearly demonstrate that the beneficiary is qualified to perform the traditional religious duties of a religious instructor and prayer caller." The petitioner also submits letters from two imams to indicate that the beneficiary possesses the required training. The text of the two letters (apart from biographical details of the imams signing them) is identical.

The newly submitted letters support the assertion that the beneficiary is adequately trained, but these letters only address part of the director's conclusion. The director concluded that the petitioner has not shown "that the beneficiary has been . . . employed in a religious occupation." Section 101(a)(27)(C)(iii) of the Act and 8 C.F.R. § 204.5(m)(3)(ii)(A) require the beneficiary to have worked in the religious occupation during the two years immediately preceding the filing of the petition. The Immigration and Naturalization Service (predecessor entity to the Bureau) has consistently held that the beneficiary's employment during this two-year period must be full-time. The record consistently indicates, however, that the beneficiary had been a student for ten years prior to his August 2000 entry into the United States. Officials of the petitioning entity have asserted that the beneficiary was "engaged" in a "professional religious capacity" for that entire ten-year period, but we cannot find that high school and college-level study constitute qualifying experience in a religious occupation.

If the beneficiary did not complete the minimum training requirements until just before his August 2000 entry, then it is not possible for him to have accumulated two years of experience between April 1999 and April 2001. If, on the other hand, the beneficiary was working full-time as a religious instructor and muezzin while still studying at Al-Azhar University, then it is obvious that completion of such university training is not a requirement for such employment. When the director specifically requested a breakdown of the beneficiary's work schedule for the two-year period immediately prior to the filing date (the majority of which time the beneficiary spent in Egypt), the petitioner did not provide such information, instead specifying only the beneficiary's

current schedule, and offering the general assertion that the beneficiary's college studies constituted qualifying duties.

We note that several witnesses misuse the term "professional" when describing the beneficiary's occupation. For the purposes of this classification, 8 C.F.R. § 204.5(m)(2) defines "professional capacity" as an activity in a religious vocation or occupation for which the minimum of a United States baccalaureate degree or a foreign equivalent degree is required. The beneficiary certainly did not have a baccalaureate degree as a fifteen-year-old student when he began his claimed ten-year "engagement" in what the petitioner calls a "professional religious capacity." Regarding the beneficiary's later education, the record shows that he completed three years at Al-Azhar University, but neither the university nor any witness indicates that the beneficiary actually received any degree or diploma from that university. The university's assertion that the beneficiary is currently enrolled in his fourth year strongly implies that the program is not considered complete at the end of three years. Therefore we cannot find that the beneficiary has ever worked in what qualifies as a professional capacity.

The petitioner has not submitted any documentation to establish the beneficiary's employment prior to August 2000. Furthermore, the petitioner's description of the training requirements for the beneficiary's position indicates that the beneficiary did not possess the necessary minimum training until shortly before he traveled to the United States eight months before the filing date. This information makes it unlikely that the beneficiary could possibly have accumulated the necessary two years of experience in the occupation. The experience requirement makes it clear that this visa classification is not intended as an avenue for aliens to immigrate almost immediately upon completion of their training or education.

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.