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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]

C1

File: EAC 01 177 55517 Office: Vermont Service Center Date: JUL 17 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]

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.

for Myra L. Rosenberg
Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner 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).

The director denied the petition, finding that the petitioner had failed to credibly establish that it needs or can afford the beneficiary's services.

On appeal, the petitioner's representative asserts that the beneficiary qualifies as a special immigrant religious worker and indicates that sufficient evidence has previously been provided to establish the claim that the beneficiary's services are needed.

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 Muslim religious organization established in 1986 with a current membership of over

400 families. The petitioner states that it manages a mosque, arranges Juma (Friday) prayers, and provides religious teachers for Islamic education and Quranic recitation for children and adults in the Muslim community at different localities in New York. Evidence is contained in the record that the petitioner is recognized by the Internal Revenue Service as tax exempt under section 501(a) of the Internal Revenue Code.

The beneficiary is described as a native and citizen of Pakistan who last entered the United States on September 19, 1998 as a nonimmigrant visitor for pleasure with permission to remain until March 19, 1999. The petition indicates that the beneficiary is married and has three children. Information concerning the current location and immigration status of the beneficiary's family members is not contained in the record.

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 to be addressed in this proceeding is whether the petitioner has established that the beneficiary has had the requisite two years of continuous experience in a religious occupation.

Regulations at 8 C.F.R. § 204.5(m)(1) state, 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 April 25, 2001. Therefore, the petitioner must establish that the beneficiary has been continuously engaged in a religious occupation for the two-year period beginning on April 25, 1999.

In this case, the petitioner asserts that the beneficiary has been employed by it as a religious teacher since March 20, 1999, working full-time from 3:00 PM to 11:00 PM, Monday through Friday. In support of that claim, the petitioner has submitted a list of names of the beneficiary's students and letters of support from the students' fathers. The petitioner asserts that it was unable to put the beneficiary on its payroll because he did not have a social security number. The petitioner asserts, however, that it paid the beneficiary $200 cash per week.

The petitioner has failed to submit any pay statements, employee records, or other financial transaction documentation showing payments to the beneficiary. Furthermore, the record contains no evidence of the beneficiary's means of financial support in the

United States. No personal bank statements or other financial information to establish that the beneficiary has supported himself and his family since April 1999 on an income of $800 per month has been provided to corroborate the petitioner's claim. 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). It is concluded that the petitioner has failed to submit sufficient documentary evidence to support the claim that the beneficiary has been continuously employed in a full-time salaried position since at least April 25, 1999.

Another issue in this proceeding is whether the petitioner has the ability to pay the beneficiary 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.

As evidence of its ability to pay, the petitioner has submitted copies of IRS Forms 990EZ for tax years 1995 through 2000, and IRS Form 990 for tax year 2001. The forms reflect that the petitioner's income has progressed from $24,900 in 1995 to $1,985,385 in 2001. The record does not contain any annual reports or audited financial statements showing, for example, the numbers of the petitioner's employees or total in salaries paid.

It is noted that the petitioner admits to having filed at least 150 petitions offering full-time permanent employment to foreign religious workers. In a letter dated April 3, 2002 (petitioner's reference DEE/02 A4), the petitioner explains:

> It may be submitted that in 1995 we had only three religious teachers who were working for our organization. Whereas at present 41 teachers are on our payroll while 128 teachers working for our organization have no social security numbers, however, our organization is paying them in cash. . . . The chance given by [the Bureau] to file the petition for those who were legal or illegal to get their status adjusted. Taking the opportunity, our organization filed about 100 petitions (Form I-360) during the period January 2001 to April 30, 2001. . . .

If, indeed, the petitioner employed 169 full-time religious teachers, each at a salary of $200 per week, the petitioner's annual budget for teaching salaries alone would be $1,757,600, or more than 88% of its latest reported annual income.

In reviewing an immigrant visa petition, the Service 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). Inherently, the Service must consider that the possible rationale for the instant petition, as well as the more than 149 others, is the organization's desire to assist alien members to remain in the United States for purposes other than provided for under the special immigrant religious worker provisions.

Based on the record as constituted, the petitioner has failed to establish that the beneficiary has had the requisite two years of continuous experience in a religious occupation and has failed to establish that it has the ability to remunerate the beneficiary in a permanent salaried position. Therefore, the appeal will be dismissed.

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

**ORDER:** The appeal is dismissed.