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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]

File: [redacted] Office: VERMONT SERVICE CENTER Date: JUL 29 2003

IN RE: Petitioner: [redacted]
Beneficiary:

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a school affiliated with the Shia branch of Islam. 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), in order to employ her as a teacher of religious subjects.

The director denied the petition, finding that the petitioner failed to establish either that the offered position qualifies as a religious occupation for the purpose of special immigrant classification, or that the beneficiary has had the requisite two years of continuous experience in a religious occupation. The director further found that the petitioner failed to establish that it had the ability to pay the proffered wage.

On appeal, counsel for the petitioner submits a brief.

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 beneficiary is a 43-year old married citizen of Pakistan. On the Form I-360 petition, the petitioner indicated that the beneficiary entered the United States as a B-2 nonimmigrant visitor for pleasure on October 8, 2000. According to the Bureau's database, the beneficiary departed the United States on February 23, 2003.

The first issue to be addressed in this proceeding is whether the petitioner established that the proposed position constitutes a qualifying religious occupation for the purpose of special immigrant classification.

8 C.F.R. § 204.5(m)(2) states, in pertinent part, that:

> *Religious occupation* means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in the regulations. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function.

The petitioner stated that it intended to hire the beneficiary to work in a leadership role in planning a women's education unit and as a practitioner of Shia female religious burial preparation. The petitioner indicated that the beneficiary would be required to spend at least 35 hours a week on her job and outlined her job duties as follows:

> Approximately 20 to 25 hours/week on teaching including actual time in class as well as home preparation of lesson plan and planning religious educational programs.
>
> Aproximately 8 to 12 hours/week of private tutoring in religious based subjects.
>
> Approximately 5 to 8 hours/week family counseling.
>
> Approximately 2 to 6 hours burial and/or funeral preparation.

The director determined that the petitioner had failed to establish that the offered position is a qualifying religious occupation because the petitioner had not established that "the duties require specified religious training above the level of a caring and dedicated congregation member to perform them." The director further determined that the petitioner "indicated that ordination is necessary but [the petitioner had] not indicated what the training requirements for ordination are." This portion of the director's decision shall be withdrawn. While the AAO concurs that the petitioner failed to establish that the proffered position is a qualifying occupation, its decision rests upon a different basis, i.e., the petitioner failed to establish that the position is traditionally a permanent fulltime salaried position; therefore, the petitioner failed to establish that the position is a qualifying religious occupation.

The next issue to be addressed in this proceeding is whether the beneficiary had been continuously carrying on a religious occupation for the two years preceding the filing of the petition.

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 April 30, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least April 30, 1999.

The petitioner submitted a letter from its president stating that the beneficiary had been rendering services for several Islamic centers in Pakistan and in the New York metropolitan area. The petitioner also submitted letters from two organizations where the beneficiary had volunteered. Both organizations indicate that the beneficiary performed services on a volunteer basis. Neither organization indicated whether the beneficiary performed those services on a full or part-time basis or whether she had been continuously engaged in such work.

The director determined that the petitioner had failed to establish that the beneficiary has the required two years of continuous experience in a qualifying religious occupation. The AAO concurs.

The statute and its implementing regulations require that a beneficiary had been continuously carrying on the religious occupation specified in the petition for the two years preceding filing. Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, the Bureau interprets its own regulations

to require that, in cases of lay persons seeking to engage in a religious occupation, the prior experience must have been full-time salaried employment in order to qualify.

The legislative history of the religious worker provision of the Immigration Act of 1990[1] states that a substantial amount of case 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. *See* H.R. Rep. No. 101-723, at 75 (1990).

In *Matter of Sinha,* 10 I&N Dec. 758 (Reg. Com. 1963), the Commissioner determined that if the beneficiary were to receive no salary for church work, he would be required to earn a living by obtaining other employment. In analogous reasoning, the Bureau determines that unpaid experience does not qualify as the beneficiary must have sought outside employment to support himself. Further, without income tax returns and W-2's, the Bureau is unable to determine how and whether the beneficiary has been employed.

The director denied the petition, in part, finding that the petitioner failed to provide sufficient evidence of its ability to pay the beneficiary. On appeal, counsel for the petitioner asserts that the petitioner has the resources as evidenced by the petitioner's 2001 Form 990 income tax return.

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.

In review, the petitioner has failed to overcome the director's objection to approving the petition. The petitioner's job offer is illegible concerning the amount of the proffered wage.

Beyond the decision of the director, the petitioner failed to establish that it is a qualifying organization. There are several classes of nonprofit organizations eligible for tax exemption under section 501(c)(3) of the Internal Revenue Code (IRC). Only organizations classified, or classifiable, as "churches" pursuant to sections 509(a)(1) and 170(b)(1)(A)(i) of the IRC are considered qualifying religious organizations for the purpose of special immigrant religious worker classification. For

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[1] Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (1990).

example, charitable organizations or schools classified under sections 170(b)(1)(A)(vi) or 170(b)(1)(A)(ii) are not tax-exempt as religious organizations, even if they are organized and operate under the principles of a particular religious faith. Such organizations are not "churches" and do not employ religious workers as contemplated by the statute. The petitioner provided the Bureau with a letter from the Internal Revenue Service verifying that the petitioner is tax exempt, but the letter fails to state whether the petitioner is tax exempt as a religious organization or on some other basis. Since the appeal will be dismissed for the reasons stated above, this issue need not be examined further.

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.