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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 31 2003

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

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a religious organization. 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 a "religious teacher/instructor." The director determined that the petitioner had failed to establish that the beneficiary had been continuously performing the duties of a qualifying religious vocation or occupation throughout the two-year period immediately preceding the filing date of the petition.

On appeal, counsel submits a brief.

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

The issue raised by the director 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.

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.

The petition was filed on April 30, 2001. Therefore, the petitioner must establish that the beneficiary was working continuously as a religious worker from April 30, 1999 until April 30, 2001. The petitioner indicated that the beneficiary last entered the United States on November 1, 1999, in an undisclosed manner. The Form I-360, Petition for Amerasian, Widow, or Special Immigrant, indicates that the beneficiary has never worked in the United States without permission.

The petitioner submitted letters from four families attesting to the fact that the beneficiary taught their [total of 13] children for the "last two to three years" on behalf of the petitioner. The letters are identical and state the beneficiary's duties during this time as:

> She teaches to our child [sic] the basic knowledge of religion and Hadiths, the way of Wadhu, prayers, different prayers or Duas for different times, duties or obligations of children to parents, of parents to children, civic duties of children towards society,

> neighbors, [sic] friends as enunciated in the religion. She is providing such services and teaching our children the religion, the Quran, Ahadiths and other prayers, as [a] member of Thayba Islamic Center, Cony [sic] Island, Brooklyn, New York. In appreciation to her devoted performance, dedication, and continuous visitation to teach our children, she is being paid monthly remunerations so as to cope up [sic] her personal living expenses.

The petitioner stated that it wishes to employ the beneficiary as a "[r]eligious teacher/[i]nstructor" at 40 hours per week. The petitioner indicated that the beneficiary would teach children the Holy Quran or recitation from 4:00 to 8:00 p.m., Monday through Friday, with Quranic explanation offered for 10 hours on Saturdays and Sundays. The petitioner stated that the duties of this position are not routinely performed by other members of the congregation or the Islamic Center, and that these duties include:

1. Teaching the Holy Quran.

2. To recite Quranic verses to children and as well as adults [sic] women.

3. To explain to the audience verses of the Holy Quran and sayings of the Prophet (AHADIS).

4. To give lessons in Arabic to the children of the community, to develop a better understanding of the Arabic language, which is the language of the Holy Quran and Prophet.

5. Teaching of the duties and responsibilities as a Muslim to children in the civic society in the light of religion and Ahadiths.

On appeal, counsel states that the petitioner's submissions clearly have met the burden of proof, that the position occupied by the beneficiary and the job offer is a permanent, full-time position, and that the affidavits are evidence that the beneficiary has been performing this work for the requisite period. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel states:

> The only reason it is not supported by W-2 form, that although the beneficiary is working on behalf of the organization, the organization does not want to start paying without the approval of the beneficiary's case. The parents of the children are at this time directly compensating the beneficiary for the work.... The petitioner and the beneficiary has [sic] met the burden

> by providing the statements from the children of the parents that the beneficiary has been working in religious capacity [sic] for two to three years and is being compensated directly by the parents. The making of W-2 [sic] is not the only way to prove that the beneficiary is working. Thus conclusion of the INS is conscious [sic] on both points.

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 unsupported assertions contained in the record do not adequately 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. The record contains no evidence that the beneficiary was paid wages by the petitioning organization during the entire two years immediately preceding the filing date of the petition, nor that the work was performed on other than a volunteer basis. The fact that the beneficiary relocated to the United States in November 1999, further precludes a finding that she was continuously performing the duties during the requisite timeframe. Therefore, the petition must be denied.

An issue not raised by the director that will be discussed in this proceeding is whether the petitioner has established that the position qualified as a religious occupation and that the beneficiary was qualified as a religious worker. To establish that the job offered is a religious occupation, a petitioner for a special immigrant religious worker must show the religious nature of the work, the religious training required to do the job, and how the alien has met the training requirements. To establish that the job offered is a religious vocation, a petitioner must show that the job requires the taking of vows or a permanent commitment to a religious life, and that the alien has taken the requisite vows or made the requisite commitment.

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.
>
> (B) That, if the alien is a minister, he or she has

authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested.

(C) That, if the alien is a religious professional, he or she has at least a United States baccalaureate or its foreign equivalent required for entry into the religious profession. In all professional cases, an official academic record showing that the alien has the required degree must be submitted; or

(D) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother, or that the type of work to be done relates to a traditional religious function.

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

> *Professional capacity* means 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.
>
> *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.
>
> *Religious vocation* means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows.

The petitioner submitted evidence of the beneficiary's receipt of a "teacher's certificate" from the Director of Education in the Lahore Division, Pakistan, in 1991. Also included in the record

is a document indicating that the beneficiary received a Bachelor of Arts degree from the University of Punjab, Lahore, Pakistan, in 1994. Another certification from the University indicates that the beneficiary received a Bachelor of Education degree in August 1999. A credential evaluation dated May 7, 2002, from Elegant Business Services, Inc. of Flushing, New York, indicates that the beneficiary's course of study is equivalent to a Bachelor of Education degree in the United States. The credentialing company, however, is not a recognized member of the National Association of Credential Evaluators, or a credentialing agency otherwise recognized by the Bureau. In its discretion, the Bureau may use as advisory opinions, statements submitted as expert testimony. However, where an opinion is not in accord with other information or is any way questionable, the Bureau is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The petitioner also submitted a letter dated October 21, 1998, from the Headmistress of the Moqaddas Girls High School, Lahore, Pakistan, stating that the beneficiary (Ayub) worked with that school as an Islamic Teacher from February 26 1992 to December 18, 1998, and that she taught the subjects of "Urdu" and Islamic Studies to 9th and 10th grade students during that time. No other evidence of this employment is included in the record, nor is any explanation furnished as to the fact that the date of the letter predates the beneficiary's actual completion of employment.

Also included in the record is an uncertified translation of a document dated November 29, 1976, and stating that the beneficiary was a student of the "HOLY QURAN as NEZRA w.e.f. 1974 to 1976." 8 C.F.R. § 103.2(b)(3) states that any document containing foreign language shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

The petitioner stated that the beneficiary is qualified for the position of religious instructor and that her duties are not performed by other members of the congregation. 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).

Counsel stated that the beneficiary had been performing religious duties as a "Religious Instructor" for the petitioner and that, based on her credentials, she is qualified for the position.

The petitioner has not demonstrated that its position of "religious teacher/instructor" is a qualifying religious vocation or occupation, since those duties identified indicate that this position consists of activities normally expected of an active

member of the religion rather than a position that would be filled by an individual who completed training in preparation for a career in religious work. Further, the record fails to reflect that the training obtained by the beneficiary qualifies her to assume the position of a religious worker for the petitioner. The beneficiary has not been shown to be qualified to engage in a religious vocation or occupation. For these additional reasons, the petition may not be approved.

Another issue that shall be discussed in this proceeding is whether the petitioner qualifies as a bona fide nonprofit religious organization as stated in 8 C.F.R. § 204.5(m). This section states, in pertinent part:

> (3) *Initial evidence*. Unless otherwise specified, each petition for a religious worker must be accompanied by:
>
> (i) Evidence that the organization qualifies as a nonprofit organization in the form of either:
>
> (A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or
>
> (B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization;

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement that applies to churches, and a copy of the organizing instrument of the church which contains a proper dissolution clause and which specifies the purposes of the organization.

The petitioner has submitted a letter of recognition issued by the

IRS on December 20, 2001, to the Thyba Islamic Center, Inc., Brooklyn, New York. The petition was filed on April 30, 2001; therefore, this documentation cannot satisfy the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), as a petitioner must establish eligibility at the time of filing. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). In the alternative, the petitioner has not submitted the documentation necessary to comply with the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B) as stated above.

The petitioner has not submitted evidence to comply with either the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A) or (B) regarding its tax exempt status as a bona fide nonprofit religious organization. The submissions do not meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A) or (B). Thus, the petition also must be denied for this reason.

The final issue to be addressed in this proceeding is whether the petitioner has had the ability to pay the beneficiary the proffered wage since the filing date of the petition. 8 C.F.R. § 204.5(m)(4) requires that each petition for a religious worker must be accompanied by a qualifying job offer from an authorized official of the religious organization at which the alien will be employed in the United States. The official must state the terms of payment for services or other remuneration. In addition, 8 C.F.R. § 204.5(g)(2) requires that the employing religious organization submit documentation to establish that it has had the ability to pay the alien the proffered wage since the filing date of the petition. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

In a letter dated May 8, 2002, counsel stated:

> [I]t is submitted that the beneficiary has been supported by the different families benefited by her religious knowledge and instruction, who provided her, [sic] donations [sic] etc., which makes her to survive [sic]. However, once she is employed by the [o]rganization, she will be paid on a regular weekly basis and will be supported full time by the [o]rganization....
>
> Once the beneficiary is approved, she will be paid by the Center per week, which will be subject to increase after review by the Committee.

In a letter dated April 26, 2001, the petitioner stated that the beneficiary is being offered a permanent job as a religious teacher based on her qualifications and the needs of the petitioner.

The petitioner submitted an unaudited financial statement for 2000 indicating a net year-end balance of $3,035, with $22,500 paid to a "Teacher." Also included in the record is a "2001 Proforma Financial Statement" indicating the petitioner's projected total income at the end of that year as $24,535 with $18,500 paid to an imam, and $112,500 paid to a "[t]eacher." The petitioner also submitted a narrative statement of expenditures and income. This document indicates that the "imam" will receive a salary of $18,500 ("mostly parsonage"), and the religious teachers "will draw a compensation package of $22,500 per year, including parsonage."

The petitioner indicated that six other applications had been filed for religious workers. No other information regarding the other petitions filed and the positions and duties of those positions is included in the record. The petitioner also stated that its membership stands at approximately 133 individuals, but that more individuals actually attend the religious activities and the prayer services.

The petitioner has not furnished annual reports, federal tax returns, or audited financial statements. The documents submitted do not satisfy the regulatory requirements of 8 C.F.R. § 204.5 (g)(2). The petitioner has not demonstrated that it has extended a valid job offer to the beneficiary, or established its ability to pay the beneficiary the proffered wage. For these additional reasons, the petition may not be approved.

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.