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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, D.C. 20536

File: WAC 01 219 51248 Office: CALIFORNIA SERVICE CENTER Date: MAY 14 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]

PUBLIC COPY

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 Service 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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a mosque. 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), in order to employ him as an Imam at a monthly salary of $1,100.

The director denied the petition, finding that the petitioner failed to establish that it has the appropriate tax-exempt status, and that the beneficiary had been continuously carrying on a religious occupation for at least the two years preceding the filing of the petition. The director further determined 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
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> (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 a Muslim mosque. The beneficiary is a native and citizen of Jordan. The petitioner states the size of its congegation is 100. The petitioner has no employees.

At issue in this proceeding is whether the beneficiary had been continuously carrying on a religious occupation for the two years preceding filing.

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 did not provide a comprehensive description of the beneficiary's employment history during the two-year period prior to filing. Absent a comprehensive description of the beneficiary's employment history, supported by corroborating evidence such as tax records, the Bureau is unable to determine that the beneficiary had been engaged in a particular vocation or occupation, religious or otherwise, for the two-year period. The petitioner submitted a letter dated April 10, 2001 from its chief executive officer stating that the beneficiary would be employed as a full time Imam and that the beneficiary had served as Imam at the petitioning organization since 1999. In a request for additional evidence, the director requested that the petitioner submit evidence of the beneficiary's work history beginning April 30, 1999, providing a weekly breakdown of the time spent performing the religious occupation, job duties, number of hours worked, remuneration, level of responsibility and who supervised the work. In reply to the request for additional evidence, the petitioner failed to provide any such evidence, except copies of two Forms 1099[1] issued to the beneficiary. The petitioner also provide the Bureau with its Form 1023 and Schedule A that contains information indicating it has no employees and total revenues of $3,790, which is insufficient to pay the wage indicated on the Forms 1099. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The evidence is insufficient to establish that the beneficiary has been continuously carrying on the religious occupation as Imam for the two years preceding filing.

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[1] For the years 1999 and 2000.

Another issue raised by the director is whether the petitioner established that it had the ability to pay the proffered wage. In pertinent part, 8 C.F.R. § 204.5(g)(2) states:

> *Ability of prospective employer to pay wage.* 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 proffered 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 copies of annual reports, federal tax returns, or audited financial statements.

The petitioner failed to provide the Bureau with copies of annual reports, federal tax returns or audited financial statements. In reply to the director's request for additional evidence, counsel for the petitioner wrote "the individual in charge of accounting is presently out of the country. Therefore, no evidence of finances is available at the present time. The 1099's are evidence that the mosque has been able to pay for the services of the Imam until the present time."[2] The regulations are clear as to the form of required evidence and the petitioner failed to provide them. The petitioner has not overcome the director's objection to approving the petition.

At issue in this proceeding is whether the petitioner is a qualifying religious organization for the purposes of this type of visa petition proceeding.

8 C.F.R. § 204.5(m)(3) states, in pertinent part, that 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:
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> (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; or
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> (B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3).

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of

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[2] The petitioner provided the Bureau with a copy of an application for tax-exempt status. The financial information provided on that form indicates that the petitioner paid no wages between February 1999 and April 2001.

a letter of recognition of tax exemption issued by the Internal Revenue Service 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 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 organizations. This documentation includes, at a minimum, a completed Internal Revenue Service Form 1023, Schedule A, and a copy of the organizing instrument of the church that contains a proper dissolution clause and which specifies the purposes of the organization.

To address this requirement, the petitioner submitted a copy of an application for recognition of exemption under section 501(c)(3) of the Internal Revenue Code, Schedule A, and its Articles of Incorporation. In review, the petitioner has met the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B).

Beyond the decision of the director, 8 C.F.R. § 204.5(m)(3)(ii)(B) requires a petitioner for a special immigrant religious worker to show, if the alien will work as a minister, or in a religious vocation or occupation, that the alien is qualified as a minister, or in the religious vocation or occupation. The record contains a letter from the petitioner and a former employer of the beneficiary stating that the beneficiary is qualified as an Imam.[3] Going on the 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). As the appeal will be dismissed, 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.

[3] The letter is not given great weight because its contents are contradicted by the evidence in the record showing that the beneficiary entered the U.S. in 1990, filed for political asylum in 1991 and was ordered deported in July 1997, all while he was ostensibly working as an Imam in Jordan.