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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N. W.  
Washington, DC 20536

File: LIN 01 163 53432

Office: NEBRASKA SERVICE CENTER

Date: **SEP 12 2003**

IN RE: Petitioner:

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:

**PUBLIC COPY**

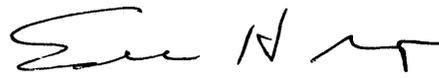
INSTRUCTIONS:

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 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, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. 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), in order to employ him as an Imam (Minister).

The director denied the petition finding that the petitioner failed to establish that the beneficiary had been performing full-time work as a minister for the two-year period immediately preceding the filing of the petition, that the beneficiary qualifies as a minister, that a qualifying job offer had been tendered, or that the petitioner had the ability to pay a qualifying wage.

On appeal, counsel argues that the submitted evidence clearly supports the approval of this 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,

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

Regulations at 8 C.F.R. 204.5(m)(1) state, in pertinent part, that:

An 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 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 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.

Regulations at 8 C.F.R. 204.5(m)(3) state, 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.

The first issue to be addressed in this proceeding is whether the petitioner has established that it has tendered a qualifying job offer.

Regulations at 8 C.F.R. § 204.5(m)(4) state, in pertinent part, that:

*Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

The record contains a letter dated April 23, 2001, from the petitioner's religious director, which states that the petitioning organization would like to employ the beneficiary as an Imam at a salary of \$30,000.00 per year. The letter indicates that the beneficiary will be working 40 hours per week with occasional overtime when required. The letter describes the beneficiary's proposed duties as conducting funeral services, as well as numerous other religious services, and that the beneficiary will be responsible for all religious publications and for maintaining the faith-based web site of the Foundation, including answering questions that are asked of the Imam over the website.

In another letter, the petitioner's religious director states that the beneficiary will spend 40 percent of his time preparing and conducting funeral services, 30 percent of his time preparing and conducting wedding services, and five percent of his time preparing and conducting holiday services. The letter further states that 15 percent of the beneficiary's time will be spent communicating with the congregation and being available for appointments with members of the petitioner's religious community.

In review, the petitioner has offered the beneficiary a specific position, has identified the terms of remuneration, and has provided a description of duties it would like the beneficiary to perform. The petitioner has tendered a qualifying job offer, and, therefore, has overcome this portion of the director's objections.

The second issue to be addressed in this proceeding is whether the petitioning organization has the ability to pay the proffered wage.

Regulations at 8 C.F.R. § 204.5(g)(2) state, 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.

On appeal, counsel requests that the Bureau review the petitioner's financial statements and those of the American Muslim Center, which counsel states is "a division of the company that the beneficiary will work with." Counsel contends that the American Muslim Center is merely a division of the petitioning organization and "is owned entirely by the organization, which has placed over \$675,000 in assets into the American Muslim Center in the current year."

Counsel states that, as the parent institution, the petitioning organization is the employer of the beneficiary. It must be noted that the record contains no documentary evidence to demonstrate that the American Muslim Center is a division of or owned by the petitioning organization.

Counsel provided a Financial Statement for the "American Muslim Center Division of Foundation of Islamic Heritage" for the period ending January 31, 2002, which shows total assets of \$675,895.84. The record also contains a copy of the petitioning organization's U.S. Government Money Market Trust, which indicates its total market value as of December 31, 2001 as \$962.69. The record further contains a copy of the petitioner's Form 990, Return of Organization Exempt From Income Tax, for 2001, which shows the petitioner's net assets for fund balances at end of the year as \$3,928.

As the record contains no documentary evidence to demonstrate that the petitioning organization is the parent of the American Muslim Center, the financial statement has no merit in this proceeding. Even if there was sufficient evidence to support the claim, the financial statement covers periods after the filing date of the petition. Further, the record contains no evidence to demonstrate that the petitioning organization is responsible for the placement of more than \$675,000 in assets into the American Muslim Center as claimed by counsel. Finally, the petitioner's financial documentation listed above by no means supports a finding that the petitioning organization has had the ability to pay the beneficiary the proffered wage of \$30,000.00 per year as of the filing date of the petition as required by 8 C.F.R. § 103.2(b)(12). For this reason, the petition may not be approved.

The third issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary is qualified to be employed as a minister.

Regulations at 8 C.F.R. 204.5(m)(2) state, in pertinent part, that:

*Minister* means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

The record contains a letter dated January 15, 2000, from the chairman of "Masjid at - Tawheed," which states that the beneficiary "has been ordained as an Imam for our church on September 1<sup>st</sup> 97 and has completed all the requirements needed to perform his duties." The record also contains a copy of a

certificate issued on August 6, 1996, from The Board of Trustees of the Haqqani Trust for New Muslims, which states that "on recommendation of our training faculty at Masjid at - Tawheed, Mountain View, California," the beneficiary received a certificate in Islamic studies. The record contains no evidence such as the type of curriculum required and the length of the course of study that the beneficiary participated in to receive such a certificate. The record contains insufficient documentary evidence to demonstrate that the beneficiary has received any religious training or education that would entitle him to perform the duties of a minister (Imam). For the reasons stated, it cannot be found that the beneficiary has been shown to be qualified to engage in a religious vocation. For this additional reason, the petition may not be approved.

The remaining issue in this proceeding is whether the beneficiary has had the required continuous work experience as a minister during the two-year period immediately preceding the filing date of the petition.

The petition was filed on April 27, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a minister from April 27, 1999 until April 27, 2001.

In a letter dated April 26, 2001, counsel for the petitioning organization states, in pertinent part, that:

Imam Sedawi was employed by the American Muslim Assistance, an organization devoted to the practice of Islam on a community and nation wide basis. The organization conducted services, assisted Muslim's with social problems and also published a magazine on Islam for American Islamic people. Mr. Sedawi worked for this organization from September of 1997 to February of 2001 as an Imam in Santa Cruz, California and then in Fenton, MI. The organization was originally called the Haqqani Trust for New Muslims but changed its name in early 1999. His daily duties consisted of conducting prayers, leading the congregational circle of dhikr (spiritual chanting and meditation), translation of religious material from Arabic to English, updating the AMA's Internet site with relevant material, and answering religious questions over the internet. He performed his duties faithfully for two years and five months before the organization disbanded. He also handled these technology related fields (internet maintenance) because he has a degree in computers.

The record contains the beneficiary's Form W-2, Wage and Tax Statement, for 1998, which shows that the beneficiary was employed by Haqqani Islamic Trust for New Muslims and earned \$19,825.00, and

his W-2 statements for 1999 and 2000, which show that he was employed by the American Muslim Assistance, and that he earned \$10,335.00 in 1999 and \$4,675.00 in 2000.

As the record contains insufficient evidence to demonstrate that the beneficiary is qualified to be an Imam, it is difficult to comprehend that he has been employed as such. The beneficiary has a "degree in computers" and it would not be unreasonable to assume that the beneficiary may have been employed on a continuous and full-time basis by the above-mentioned religious organizations in a secular capacity, and that he may have performed some of the described religious duties on a voluntary basis. The evidence provided fails to demonstrate that the beneficiary had been continuously and solely working as a minister during the two-year qualifying period. The record fails to sufficiently demonstrate that the beneficiary received any wages from the above-mentioned religious organizations in return for the performance of any religious work. The W-2 forms, in themselves, are not sufficient in this case to establish that the beneficiary worked as a minister from April 27, 1999 until April 27, 2001. For this additional reason, the petition may not be approved.

Further, while the determination of an individual's status or duties within a religious organization is not under the Bureau's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within the Bureau. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee* 16 I&N Dec. 607 (BIA 1978).

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.

**ORDER:** The appeal is dismissed.