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U.S. Department of Homeland Security

Citizenship and Immigration Services

Identifying data deleted to prevent [illegible] warranted invasion of [illegible]

[redacted]

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street NW
Washington, DC 20536

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 30 2003

IN RE: Petitioner: [redacted]
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 Citizenship and Immigration Services (CIS) 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.

Cindy N. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director of the California Service Center and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is an Islamic religious school. 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 her as an Arabic & Islamic studies teacher.

The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two years immediately preceding the filing date of the petition. The director further determined the petitioner had not established that it had the ability to pay the beneficiary the offered salary.

On appeal, counsel submits a statement and additional documentation.

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).

Pursuant to 8 C.F.R. § 204.5(m)(1):

> 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 first issue to be addressed in this proceeding is whether the petitioner has established that 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.

The director noted that the beneficiary had worked at the petitioner's school as a volunteer since September 2000, and had been provided with room and board by her sister. The director, therefore, determined that the petitioner had not shown that the beneficiary was engaged continuously in a qualifying religious

vocation or occupation during the entire two-year period immediately preceding the filing date of the petition.

On appeal, the petitioner states that the beneficiary arrived in the United States on July 1, 2000, but could not begin teaching at the school until September of 2000, because the school was closed for summer vacation during the months of July and August. The petitioner asserts that it is normal procedure at most religious institutions to have volunteers perform the same services as salaried employees. Finally, the petitioner states that the beneficiary taught full-time during the qualifying period.

Pursuant to 8 C.F.R. § 204.5(m)(1):

> 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 February 20, 2002. Therefore, the petitioner must establish that the beneficiary was continuously engaged in a qualifying religious occupation during the period from February 20, 2000 to February 20, 2002.

The petitioner states that the beneficiary taught religious education and Quran at the Elsayed Elshiekh Private Primary Education School in Egypt from September 1, 1990 to June 1, 2000. She entered the United States on July 1, 2000 as a nonimmigrant B-2 visitor with stay authorized to December 30, 2000. The petitioner states that the beneficiary volunteered as an Islamic Studies teacher at Straight Way School, West Covina, California from September 2000 to February 20, 2002, the filing date of the petition. It is noted that the petitioner, the Islamic Learning & Practicing Center, has not provided any information as to the exact nature of its relationship with Straight Way School.

The legislative history of the religious worker provision of the Immigration Act of 1990 reflects that a substantial amount of case law has 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).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he or she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B,* 3 I&N Dec. 162 (CO 1948).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese,* 17 I&N Dec. 399 (BIA 1980).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he or she would be required to earn a living by obtaining other employment. *Matter of Bisulca,* 10 I&N Dec. 712 (Reg. Comm. 1963); *Matter of Sinha,* 10 I&N Dec. 758 (Reg. Comm. 1963.

In line with these past decisions and the intent of Congress, it is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he or she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who, in accordance with their vocation, live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and salaried. To find otherwise would be outside the intent of Congress.

In this case, the evidence of record does not support a finding that the beneficiary was engaged continuously in a full-time,

salaried religious occupation during the qualifying period. There is no evidence in the record to show that the beneficiary was working as a religious instructor during the period from June 1, 2000 to September 1, 2000. Furthermore, the beneficiary's work as a full-time, volunteer Islamic studies teacher from September 1, 2000 to February 20, 2002 does not constitute qualifying work experience in the religious occupation because the work was not full-time, salaried employment. Therefore, the petitioner has not established that the beneficiary was engaged continuously in a qualifying religious vocation or occupation during the full two-year period immediately preceding the filing date of the petition, and the petition must be denied.

The second issue to be addressed in this proceeding is whether the petitioner has shown that it has the ability to pay the beneficiary the offered salary.

Pursuant to 8 C.F.R. § 204.5(g)(2):

> 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, the petitioner states that it has previously submitted a profit-and-loss statement and balance sheet to show that it has the ability to pay the beneficiary the offered salary. The petitioner has not, however, submitted annual reports, federal tax returns, or audited financial statements. Therefore, the petitioner has not met the regulatory requirement, and the petition must also be denied for this reason.

Beyond the director's decision, the petitioner has not established that the beneficiary is qualified for the position within the religious organization. The petitioner states that the minimum requirement for the position in question is two years' prior experience in the occupation. The petitioner submitted an "experience certificate" signed by the principal of

Elshiekh Private Primary Education school in Egypt. This individual states that the beneficiary served his school as a religious education and Quran teacher from September 1, 1990 to June 1, 2000. He did not, however, provide any information as to the nature of the school or the school's requirements for the position. Although the beneficiary holds a Bachelor of Arts degree in Islamic Law from Mansoura University in Egypt, the petitioner has not provided any evidence to show that this degree qualified the beneficiary for the position in question.

The petitioner has also failed to establish that the offered position qualified as that of 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 and the religious training required to do the job. The petitioner states that the duties of the position include teaching Arabic and Islamic studies and instruction in religious practices, prayers and holy days. These duties are those 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. As the appeal will be dismissed on the grounds discussed, these issues will not be addressed further in this proceeding.

In reviewing an immigrant visa petition, the AAO 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.