identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

U.S. Department of Homeland Security

Citizenship and Immigration Services

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

File: [redacted] Office: Vermont Service Center Date: SEP 30 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 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center, and is now on appeal before the Administrative Appeals Office (AAO). 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 (Islamic clergyman), religious teacher, and Islamic pastoral counselor at an annual salary of $12,000, plus room and board.

The director denied the petition, finding that the petitioner had failed to establish that the proposed position is a qualifying religious occupation, the beneficiary has been and will be employed in a religious occupation, and that it had the ability to pay the beneficiary the proffered wage as of the date of filing the petition.

On appeal, counsel for the petitioner 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

 [redacted]

> work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner is described as one of the oldest extant Sunni Muslim congregations in the United States. The petitioner states that it sponsors the establishment of places of worship and that the beneficiary is employed at one such site, [redacted] located at [redacted] Although the petitioner has submitted evidence that it was granted federal tax exemption pursuant to section 501(c)(3) of the Internal Revenue Code, there is no documentary evidence contained in the record, apart from the petitioner's statement, as to [redacted] affiliation with the petitioner.

The beneficiary, a native and citizen of Mauritania, entered the United States without inspection on July 28, 1998. On November 16, 1998, he was placed in removal proceedings, and on April 19, 1999, an immigration judge ordered the beneficiary removed from the United States.

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

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

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

> *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. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.
>
> *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 that a religious vocation is offered, a petitioner

must show that the job requires the taking of vows and a permanent commitment to a religious order, and that the alien has taken the requisite vows and made the requisite commitment.

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 regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed and practice of the religion. The regulation reflects that non-qualifying positions are those where the duties are primarily administrative or secular in nature. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In support of the petition, the petitioner submitted a letter dated April 23, 2001 stating that:

> [The beneficiary] is multi-lingual. He speaks excellent English, as well as French, Arabic and Fulani. Coupled with his religious training received in the country of Mauritania (where he worked as a teacher), his language skills have made him a valuable asset as a liaison between [the petitioner] and new arrivals to this country, in the areas of counseling and instruction.

In response to the director's request for additional information, the petitioner submitted a letter dated April 24, 2002, stating that the beneficiary began his services as an associate clergyman in February 1999 and that he assists the senior imam by conducting daily prayer services, delivering weekly sermons, counseling those in need, teaching religious classes, and officiating at marriage, birth, and burial ceremonies. The petitioner also submitted a letter dated May 7, 2002, from the Imam of the Islamic Cultural Center of New York, stating that the beneficiary is competent and qualified to perform such duties.

On appeal, counsel states that it is a well-known fact that an imam is a clergyman of the Islamic faith, equivalent to a priest, pastor, or rabbi in other religions, and is universally known as the leader of a Muslim congregation. In support of this claim, counsel submits copies of pages from the Qur'an showing that an imam is "literally one who is initiated and whose example is followed," generally means "a head or a chief or a leader," and is the leader of prayers in a Muslim congregation. Counsel also submits documentation indicating that the beneficiary was appointed in Mauritania as a Professor of Religious, Civic and Moral Education at the Islamic Institute Ben Abass in Nouakchott from September 16, 1980 to June 30, 1996, and as Assistant Imam at the Grand Mosque of Ibn Rouchd in Teyarett from July 1, 1996 to April 28, 1998.

After a careful review of the record, it is concluded that the petitioner has failed to submit sufficient evidence to establish that the proposed position constitutes a qualifying religious occupation. The petitioner has submitted no documentation verifying that the position requires specific prescribed religious training or theological education, and that it is a traditional full-time, paid occupation in its denomination. The petitioner gave no indication that it has ever employed a person in this capacity in the past and gave no explanation of its decision to do so at this time. There is also no indication that the position was advertised or that other candidates were considered. This set of facts is insufficient to establish that the proposed position is a traditional religious occupation in the petitioning organization.

The second issue to be addressed is whether the petitioner has established that the beneficiary has had the requisite two years of continuous work experience in the proffered position.

The regulation at 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 May 3, 2001. Therefore, the petitioner must establish that the beneficiary had been continuously engaged as an imam for the two-year period beginning on May 3, 1999.

In this case, the petitioner asserts that the beneficiary has been performing services as an assistant imam since February 1999, between the hours of 5:30 AM and 9:00 PM, and that he is compensated for his services with a minimum annual stipend of $12,000, plus room and board. However, no documentation to support

these claims is contained in the record of proceeding. 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).

Absent corroborating evidence such as the beneficiary's income tax statements, W-2 Forms, and the petitioner's payroll records, the Service is unable to determine that the beneficiary had been engaged in any particular occupation, religious or otherwise, for the two-year period. CIS is therefore, unable to conclude that the beneficiary had been engaged in a full-time salaried religious occupation during the two-year qualifying period.

The third issue to be addressed in this proceeding is whether the petitioner established that it had the ability to pay the beneficiary the proffered wage at the time of filing the petition continuing until the beneficiary obtains lawful permanent residence.

The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part, that:

> *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 record includes a statement of the petitioner's assets and liabilities for the period ending December 31, 1990, and an audited financial report for the year ending on December 31, 1998. The director found both statements outdated and noted that the 1998 statement reflected only minimal funds available and did not indicate an allocation of salaries for employees. The director concluded that the evidence submitted was insufficient to establish the petitioner's ability to pay the beneficiary the proffered wage.

On appeal, counsel submits an unaudited financial report for the period January 1, 2001 through December 15, 2002.

After a careful review of the record, it is concluded that the petitioner has failed to satisfactorily demonstrate its ability to pay the beneficiary the proffered wage at the time of filing the petition. We disagree with the director that the petitioner's audited 1998 financial report is outdated, as it was the most

recent year-end report available at the time the petition was filed on May 3, 1999. However, the report reflects a negative balance of assets and liabilities of $489 and a negative balance of revenue and expenditures of $1,390, not considering allocations for employee salaries.

While the determination of an individual's status or duties within a religious organization is not under CIS's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with CIS. 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. Here, that burden has not been met.

ORDER: The appeal is dismissed.