



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUL 24 2015** OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant 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:

INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition on December 10, 2005. On further review, the director determined that the beneficiary was not eligible for the visa preference classification. Accordingly, the director served the petitioner with a Notice of Intent to Revoke (NOIR) the approval of the preference visa petition stating the reasons therefore and subsequently exercised her discretion to revoke the approval of the petition on May 7, 2014. The matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner is an Islamic center. 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 an “Imam and Director of Religious Affairs.” In revoking the petition, the director determined that the petitioner submitted insufficient evidence to establish that: it qualifies as a bona fide nonprofit religious organization or a bona fide organization which is affiliated with the denomination; the beneficiary is qualified for the proffered position; the beneficiary worked as a minister in the petitioner’s denomination for the two-year period immediately preceding the filing of the petition; and the petitioner has the ability to pay the proffered wage.

On appeal, the petitioner submits additional evidence.

RELEVANT LAW AND REGULATIONS

Section 205 of the Act, 8 U.S.C. § 1155, states that the Secretary of the Department of Homeland Security “may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.”

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In Matter of Estime, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Id.*

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 September 30, 2015, 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 September 30, 2015, 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 Revenue Code [IRC] 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).

The regulation in effect at the time the petition was filed provided at 8 C.F.R. § 204.5 (m)¹:

(1) 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 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

¹This decision is adjudicated using the statutory and regulatory provisions pertaining to the Special Immigrant Religious Worker visa category as they were in place at the time of the filing of the present petition on March 14, 2005.

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. . . .

(2) *Definitions.* As used in this section:

Bona fide nonprofit religious organization in the United States means an organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations, or one that has never sought such exemption but establishes to the satisfaction of the Service that it'd be eligible therefore if it had applied for tax exempt status.

Bona fide organization which is affiliated with the religious denomination means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

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.

....

(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 [IRS] to establish eligibility for exemption under section 501(c)(3) of

the Internal Revenue Code of 1986 as it relates to religious organizations; and

(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; and

(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; or

....

(iii) If the alien is to work in a non-ministerial and non-professional capacity for a bona fide religious organization which is affiliated with the religious denomination, the letter from the authorized official must explain how the affiliation exists. A tax-exempt certificate indicating that the affiliated organization is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations is required in this instance.

(iv) In appropriate cases, the director may request appropriate additional evidence relating to the eligibility under section 203(b)(4) of the Act of the religious organization, the alien, or the affiliated organization.

....

The regulation 8 C.F.R. § 204.5(g)(2) stated in pertinent part:

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 first issue is whether the petitioner qualifies as a bona fide nonprofit religious organization or a bona fide organization which is affiliated with the denomination.

PERTINENT FACTS AND PROCEDURAL HISTORY

As evidence of its nonprofit status, the petitioner submitted a December 17, 1991, letter from the IRS which stated that the petitioner is an organization that is exempt from taxation under section 501(c)(3) of the IRC as described in sections 509(a)(1) and 170(b)(1)(A)(vi). The petitioner also submitted a letter dated March 1, 2005, signed by Dr. [REDACTED] Co-Chairman, [REDACTED] that the religious purpose of the petitioning organization is obvious as it is a Muslim Center seeking to employ an imam and religious affairs director.

The director issued a Request for Evidence (RFE) on August 9, 2005, asking that the petitioner submit additional evidence to establish the bona fides of the petitioning organization. The petitioner submitted no additional documentation responsive to the director's request. Nonetheless, the petition was approved on December 10, 2005.

The director issued a NOIR on February 26, 2014. The director stated in the NOIR, in part, that the petitioner had not established that it was a bona fide nonprofit religious organization in the United States or a bona fide organization which is affiliated with the religious denomination. Specifically, the director stated that the evidence of record did not establish the petitioner's religious purpose and nature. The director noted in the NOIR that a memorandum from William R. Yates, Assoc. Dir. of Operations, USCIS, to USCIS Serv. Ctr. Dirs., Reg'l Dirs., and Dist. Dirs., Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Organizations (December 17, 2003), http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files/Memoranda?Archives%201998-2008/2003/m_relext2003pub.pdf, (2003 Yates Memorandum), set forth specific documentation which must be provided to establish an organization's religious nature and purpose when the organization has been granted tax exempt status as something other than a religious organization.

In response to the NOIR, the petitioner stated, in part, that it had submitted sufficient documentation to establish that it was a bona fide nonprofit religious organization. The petitioner referenced its IRS determination letter stating that it had been awarded tax exempt status under section 501(c)(3) of the IRC as described in sections 509(a)(1) and 170(b)(1)(A)(vi), and documentation previously submitted to show the religious nature and purpose of the petitioner. The petitioner acknowledged that it had not submitted a properly completed IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, or a completed Schedule A supplement referenced in the 2003 Yates Memorandum stating that the memorandum did not require submission of those documents but only stated that they "may" be submitted.

The director revoked approval of the petition on May 7, 2014, and the decision was appealed to the AAO.

On appeal, the petitioner states, in part, that the evidence of record establishes that it is a bona fide nonprofit religious organization. In support of that assertion the petitioner submitted:

- A letter from the IRS dated March 24, 2008, which states that an IRS determination letter was issued in May 1988 recognizing the petitioner as exempt from federal income tax under section 501(c)(3) of the IRC, not as a private foundation within the meaning of section 509(a) of the IRC, but one described in sections 509(a)(1) and 170(b)(1)(A)(vi).²
- A letter from the IRS dated December 17, 1991, which states that the petitioner is exempt from Federal income tax under section 501(c)(3) of the IRC. The letter further stated that the petitioner is not a private foundation within the meaning of section 509(a) of the IRC but one described in sections 509(a)(1) and 170(b)(1)(A)(vi).
- A copy of its certificate of incorporation which states that its principal purpose is to:

[F]oster and develop appreciation of the Muslim faith, to strengthen the fellowship of Muslims in the Community by promoting good deeds and discouraging evil ones as enjoined in the Quaran, to provide a forum for seeking solutions to contemporary problems in light of the Quaran and the traditions of the Prophet Muhammad, to arrange, coordinate, and undertake other Islamic activities, to help improve understanding of Islam in the community at large, to develop and encourage friendly relations between persons of other faiths, and to promote the study, improvement and advancement of Islam and Islamic [c]ulture as a way of life.

- A letter dated June 12, 2014, from [REDACTED], [REDACTED], Accounting & Tax Services, which states that the petitioner has been its business client for the last five years and that the petitioner “is a Mosque (Muslim House of Worship)” and, as such, is a not-for-profit tax exempt organization under section 501(c)(3) of the IRC.

² Section 170(b)(1)(A)(vi) of the IRC pertains to organizations referred to in subsection (c)(2) which normally receive a substantial part of their support (exclusive of income received in the exercise of performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from a governmental unit referred to in subsection (c)(1) or from direct or indirect contributions from the general public. Charitable contributions mean contributions or gifts to or for the use of corporations, trusts, community chests, funds or foundations organized or operated exclusively for religious, charitable, scientific, literary or educational purposes, or to foster national or international amateur sports competition or for the prevention of cruelty to children or animals.

- A [REDACTED] Nonprofit Report which states that the petitioner was founded in [REDACTED] and is categorized as “Religion, Spiritual/Development/X99.” The National Center for Charitable Statistics [REDACTED] states that the X99 code is assigned to organizations that clearly provide services relating to religion where a more specific code cannot be more accurately assigned such as: “Unitarianism, Taoism, Sikhs, Zoroastrism, Atheism, Adualism, Theosophy, Bahatism, and reference to miracles.”
- A previously submitted letter dated March 1, 2005, signed by Dr. [REDACTED] Co-Chairman, [REDACTED], which states that the petitioner “has been serving as a mosque, place of worship and religious school at its present location for the past 17 years” with a congregation of approximately 140 families.
- A Salaah Time Table for the petitioner setting forth prayer schedules, Sunday School times for children, “[REDACTED]” (the beneficiary) every Friday after Esha Prayer and every Sunday at 12:30 p.m. and other events offered at the petitioner’s facility. The document notes that the Masjid (Mosque) Hall is available for rent.
- A flyer noting a celebration for Chand Raat at the petitioner’s facility on January 19, 2005.³
- A flyer noting Eid-ul-Adha Prayer sponsored by the petitioner to be held at the [REDACTED] NY on January 21, 2005.
- A flyer indicating that the petitioner, among other groups, is sponsoring a “Special Prayer for all the Tsunami Victims in Southern Asia” on January 17, 2005, at the petitioner’s facility in [REDACTED] NY.
- A letter dated January 7, 2005, from the petitioner’s co-chairman, [REDACTED] soliciting donations for tsunami victims.
- The petitioner’s newsletter (January 2005) containing quotations from the Quaran and notifications of forthcoming events. The newsletter notes that the petitioner is celebrating its 17th year at its present location and that it has future plans to, among other things, expand its masjid (mosque) prayer area, increase masjid membership, and improve and expand the Sunday School.

³ The petitioner states in its appeal brief that “Chand Raat is a Muslim holiday celebrated the day prior to the two major Muslim holidays, Eid-ul-Fitr, the commemoration of the end of Ramadan, and Eid-ul-Adha, the commemoration of Abraham’s willingness to kill his first-born son, Ishmail, as an act of submission to God’s will.”

- The petitioner's newsletter (April 2005) containing quotations from the Quran, information about the petitioner's Sunday School and forthcoming petitioner events.
- A flyer on the petitioner's Summer Day Camp whose focus is "increasing knowledge of Islam."
- Pictures of religious services being conducted at the petitioner's facility.

ANALYSIS

The regulation at 8 C.F.R. § 204.5(m)(3), in effect at the petition's filing, stated that the Form I-360 must be accompanied by documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the IRC, or such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the IRC, as those provisions relate to religious organizations.

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 as it relates to religious organizations issued by the 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 IRC as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, if applicable, and a copy of the organizing instrument of the organization that contains a proper dissolution clause and which specifies the purposes of the organization.⁴

The petitioner submitted copies of letters dated December 17, 1991, and March 24, 2008, from the IRS acknowledging its tax-exempt status under section 501(c)(3) of the IRC. According to documentation from the IRS, the petitioner's tax-exempt status derives from classification not under section 170(b)(1)(A)(i) of the IRC, which pertains to churches, but rather under section 170(b)(1)(A)(vi) of the IRC, which pertains to publicly-supported organizations as described in section 170(c)(2) of the IRC, "organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes," or for other specified purposes. This section refers in part to religious organization, but to many types of secular organizations as well.

An organization that qualifies for tax exemption as a publicly supported organization under section 170(b)(1)(A)(vi) of the IRC can be either religious or non-religious. The burden of proof is on the petitioner to establish that its classification under section 170(b)(1)(A)(vi) derives primarily from its religious character, rather than from its status as a publicly supported charitable and/or educational institution.

⁴ The Form 1023 must be filed for recognition of exemption from federal income tax under section 501(c)(3). (IRS official website - <http://www.irs.gov/uac/Form-1023,-Application-for-Recognition-of-Exemption-Under-Section-501%28c%29%283%29-of-the-Internal-Revenue-Code>).

Because the IRS determination letter that classifies an entity under section 170(b)(1)(A)(vi) of the IRC cannot, by itself, establish that the entity is a religious organization, that determination letter cannot satisfy 8 C.F.R. § 204.5(m)(3)(i)(A). The other option, at that point, is to comply with 8 C.F.R. § 204.5(m)(3)(i)(B) by submitting the documentation that the IRS would require to determine that the entity is a religious organization.

The organization can establish this by submitting documentation that establishes the religious nature and purpose of the organization, such as brochures or other literature describing the religious purpose and nature of the activities of the organization. The necessary documentation is described in the 2003 Yates Memorandum:

- (1) A properly completed IRS Form 1023,
- (2) A properly completed Schedule A supplement, if applicable,
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization, and
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The above list is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B), cited above. The memorandum specifically states that the above materials are, collectively, the “minimum” documentation that can establish “the religious nature and purpose of the organization.” Thus, for example, a petitioner cannot meet this burden by submitting only its articles of incorporation. Further, it is not enough merely for the petitioner to submit the documents listed above; the content of those documents must establish the religious purpose of the organization.

On appeal, the petitioner states that the evidence of record establishes that it is a bona fide nonprofit religious organization and submitted witness letters, brochures, calendars, flyers and other documents describing its religious nature and purpose. This information is relevant to item four of the 2003 Yates Memorandum. The petitioner did not submit, however, documentation relative to items one and two of the Memorandum and asserts that the submission of the documentation detailed in the 2003 Yates Memorandum is not required to establish the petitioner’s status as a nonprofit religious organization as the memorandum states that the listed documents “may be submitted.”

The regulation required “documentation as is required by the [IRS] to establish eligibility for exemption under § 501(c)(3) of the [IRC].” The 2003 Yates Memorandum merely outlines what is needed to meet the requirements of the regulation. Neither the cited regulation nor the 2003 Yates Memorandum require submission of the IRS Form 1023, but the regulation specifically requires submission of the same documentation required by the IRS to establish eligibility for exemption under section 501(c)(3) of the IRC if the petitioner’s tax exemption is based on something other than a religious organization. This would include the information contained in the Form 1023. The petitioner did not provide that information. The petitioner has not, therefore, submitted the documentation required by regulation to establish that it is exempt from taxation in accordance with

section 501(c)(3) of the IRC of 1986 as it relates to religious organizations. For this reason, the petition must be denied.

The director noted in her decision revoking approval of the petition that the petitioner had used two different employer identification numbers (EIN). The petitioner stated on the Form I-360 that its EIN was [REDACTED]. The IRS determination letter submitted by the petitioner states that the petitioner's EIN is [REDACTED]. When asked to explain the discrepancy in the NOIR, the petitioner responded that it had changed locations since the determination was issued and that nothing precluded it from applying for a new EIN after a location change. The petitioner did not submit evidence that it had applied for or received a new EIN after its change of address. The director noted that the IRS website for exempt organizations indicated that EIN [REDACTED] was assigned to the [REDACTED] and not the petitioner. The website further indicated that EIN [REDACTED] was assigned to the petitioner.

On appeal, the petitioner stated that the EIN assigned to the [REDACTED], Inc. was placed on the Form I-360 in error and that the record establishes the correct EIN for the petitioner. As such, the petitioner states that the discrepancy is not material to whether or not the petitioner has established that it is a tax-exempt religious organization. We agree that the petitioner's correct EIN is established in the record, and that the noted discrepancy is not material to whether or not the petitioner has established that it qualifies as a bona fide nonprofit organization. However, the IRS website and the assignment of an EIN alone do not meet the requirements of the regulation at 8 C.F.R. § 204.5(m) as it existed in 2005. As the petitioner has not submitted the required documentation, the petition cannot be approved.

The second issue is whether the beneficiary is authorized to perform the duties of the proffered position.

PERTINENT FACTS AND PROCEDURAL HISTORY

The petitioner submitted with the filing of the petition a letter dated March 1, 2005, from its co-chairman, Dr. [REDACTED] which states that the beneficiary has been serving as its imam and director of religious affairs continuously since July 2002 pursuant to an R-1 visa which was valid until May 31, 2006. According to Dr. [REDACTED] the beneficiary served as the director of the [REDACTED] Pakistan from 1996 until July 2002. In support of its employment assertions for the beneficiary, the petitioner outlined the beneficiary's duties and hours of work and provided copies of IRS Forms 1099-MISC, Miscellaneous Income, for years 2003 and 2004 showing the beneficiary was paid \$24,000 by the petitioner in each of those years. The petitioner submitted a letter dated May 10, 2001, from the [REDACTED] which states that the beneficiary has been its director since 1996 "preaching Islam successfully to a vast number of Muslims in Pakistan and abroad." A letter dated May 2, 2001, from [REDACTED] states that the beneficiary was "associated with our mosque as [REDACTED] for Friday prayers since about one year." Finally, a letter dated August 25, 2001, and signed by [REDACTED] (last name not legible) states that the beneficiary "has worked in our [REDACTED] from 1989 to 1996" as an Imam and [REDACTED]

On August 9, 2005, the director issued an RFE asking, in part, that the petitioner submit a letter from an "authorized official of the religious organization" stating that the beneficiary has "authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy." The petitioner was also asked to submit a copy of the beneficiary's "certificate of ordination or other authorization."

In response to the RFE, the petitioner stated that evidence of ordination or recognition by ecclesiastical institutes do not exist in Islam and submitted "A Review of the Bureau of Prisons Selection of Muslim Religious Services Providers" dated April 2004 from the Office of the Inspector General () to establish that assertion. The Bureau of Prisons requires applicants for Muslim Chaplains to provide "adequate documentation of their religious and ministerial role within their religious community." The petitioner states that "[t]his documentation is required in lieu of formal ordination or recognition by ecclesiastical institutes, which do not exist in Islam." The petitioner submitted the following documents to establish the beneficiary's qualifications:

- A diploma from (Pakistan) awarding the degree of Masters of Science in Islamic Sciences to the beneficiary in 1990;
- A Certificate of Expertise in Exegesis of the Holy Quran, Registration # (Pakistan), which states that the beneficiary was awarded a Doctorate (Ph.D) in Islamic Law and Legal Verdict in (Pakistan) in 1992.
- A certificate from the () which states that the beneficiary completed a four week course in "contemporary business and banking and its critical evaluation in the light of sharia" on [date not legible].
- A letter dated September 18, 2005, from () Chairman, () which states that the beneficiary "is a regular invitee to this Organization as a religious scholar and reformer who is always very well respected for his Islamic knowledge and expertise in Islamic Jurisprudence and as an authority on Qur'an, the holy book."
- A letter dated September 27, 2005, from (), President, () which states that the beneficiary is the director of religious affairs at the petitioner's facility, and that the beneficiary "delivers scholarly lectures on the Holy Book, Quran and Hadeeth (Kind Sayings of Prophet Muhammad P.B.U.H) and various other topics related to Islam, every week, in various Islamic Centers in the New York state."

In her February 26, 2014, NOIR, the director noted that in the RFE, USCIS had requested "a letter from an authorized official of the religious organization in the United States that establishes that, if the alien is a minister, he or she has an authorization to conduct religious worship. However, no such letter was provided by the petitioner." The director stated again that the petitioner had not adequately addressed the issue of whether the beneficiary is authorized to perform duties as a minister or member

of the clergy for the religious organization in the United States.

In response to the NOIR, the petitioner stated that it had provided sufficient evidence to establish that the beneficiary is qualified to act as Imam and Director of Religious Affairs for the petitioner. The petitioner asserts that:

With respect to whether the Beneficiary has jurisdiction to conduct religious worship, the Petitioner provided the Service information stating that ordination does not exist in the Islamic tradition. Based on the foregoing, it is respectfully submitted that requiring the Petitioner to provide a letter stating that the Beneficiary has authorization to conduct worship is unnecessary. Ordination does not exist in the Petitioner's religious tradition. Therefore, a letter from the Petitioner stating the Beneficiary has authorization to conduct religious worship would have no evidentiary value.

The petitioner states that it has provided evidence of the beneficiary's religious and ministerial role within its religious community in lieu of evidence of formal ordination or recognition by ecclesiastical institutes which do not exist in Islam and that this evidence establishes the beneficiary's qualifications for the proffered position. In further support of the beneficiary's qualifications, the petitioner submitted the following documents:

- A 1990 certificate from the Arabic Schools Association Presidency in Pakistan stating that the beneficiary has been granted the Universal Degree in Islamic and Arabic Sciences by the [REDACTED] Pakistan.
- A certificate from the [REDACTED], Pakistan awarding the beneficiary a Certificate of Specialization in Jurisprudence and Ifta.
- An educational equivalency evaluation from the [REDACTED] dated November 10, 2005, stating that the beneficiary's foreign education, completion of a master's program in Islamic Sciences and a doctoral program in Islamic Law and Legal Verdict at the [REDACTED] in Pakistan, is equivalent to a Master of Science Degree in Islamic Law and a Doctor of Philosophy Degree in Islamic Law from an accredited college or university in the United States.

As previously noted, the director revoked the petition on May 7, 2014, stating, in part, that the petitioner failed to establish that the beneficiary is qualified for the proffered position. The petitioner states on appeal that the beneficiary is qualified to perform the duties of the proffered position, noting that the beneficiary:

- was granted R-1 religious worker status from July 31, 2001, until May 31, 2006.
- is a highly regarded Islamic scholar who works as Imam and the Director of Religious Affairs for the petitioner.

- received a Certificate of Exegesis of the Holy Quran from [REDACTED] in [REDACTED] Pakistan.
- received a Master of Science degree in Islamic Studies from the [REDACTED] in [REDACTED] Pakistan.
- completed a course in contemporary business and banking and its relation to Islamic law.
- is a regular invitee to Islamic organizations in the New York area speaking on topics in Islamic jurisprudence, Islamic knowledge and the Quran.

The petitioner resubmitted additional documents relative to the beneficiary's education, experience and qualifications which had previously been submitted and are included in the record of proceeding. Nonetheless, the petitioner did not submit specific documentation as required by the regulation to establish that while the beneficiary may have been qualified to perform the proffered duties, that he was also authorized to do so.

ANALYSIS

The regulation at 8 C.F.R. § 204.5(m)(3)(ii)(B) provided that if the beneficiary will be performing the services of a minister, the petitioner must establish that the beneficiary 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. The director requested in a RFE that the petitioner submit a letter from an "authorized official of the religious organization" stating that the beneficiary has "authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy." The petitioner did not submit the requested letter.

The director noted in her NOIR that the petitioner had not provided a letter from an authorized official of the religious organization stating the beneficiary was authorized to conduct religious worship and to perform other duties usually performed by authorized members of the clergy though specifically requested in an RFE. The director specifically stated in the NOIR that the petitioner had not adequately addressed the issue of whether the beneficiary is authorized to perform duties as a minister or member of the clergy for the religious organization in the United States. The petitioner again did not submit the requested letter in response to the NOIR, or on appeal, stating that any such letter would be unnecessary and of no evidentiary value since Islam does not ordain clergy or recognize clergy qualifications by any religious body or institution.

While the determination of an individual's status or duties within a religious organization is not under USCIS's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with USCIS. 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 petitioner has not provided evidence required by 8 C.F.R. § 204.5(m)(3)(ii)(B) and has not established that the beneficiary is authorized to perform ministerial duties for the petitioning organization. The petitioner has submitted evidence of the beneficiary's education and experience in an effort to establish that he is qualified to perform the duties of the proffered position. The petitioner has not, however, established that the beneficiary is authorized to conduct religious worship and to perform other duties usually performed by authorized members of the clergy. For this reason, the petition must be denied.

The director also questioned the certification of translated documents that were submitted to establish the beneficiary's qualifications. The regulation at 8 C.F.R. § 103.2(b)(8)(ii) states that any document containing foreign language submitted to USCIS "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 October 28, 2005, certification submitted by the petitioner was prepared by the coordinator of translation services for Universal Language Services who certified that another individual translated the documents and that the translator was fluent in Arabic and North American English and certified to translate. The translated document was not properly certified as the translator did not provide the certification as required by regulation. The third-party certification does not meet the requirements of the regulation. The petitioner resubmitted the documents in response to the director's NOIR with a new translator certification dated March 25, 2014. This certification stated that the documents "have been translated from Arabic into English by staff members of TRANSLIGUA who are familiar with both the Arabic and English languages, and are to the best of our knowledge, ability and belief, true and accurate translations." The certification does not meet the requirements of the regulation. The certification does not name the translator, merely stating that the documents were translated by "staff members." The regulation specifically requires the individual[s] translating the documents to provide the required certification. As such, the translated documents are of no evidentiary value and will not establish the beneficiary's qualifications for the proffered position.

The third issue is whether the petitioner submitted sufficient evidence to establish that the beneficiary worked as a minister in the petitioner's denomination for the two year period immediately preceding the filing of the petition.

PERTINENT FACTS AND PROCEDURAL HISTORY

The two-year period immediately preceding the filing of the petition covers the time frame March 14, 2003 to March 14, 2005. As discussed previously, the petitioner's March 1, 2005, letter stated that the beneficiary had been serving as its imam and director of religious affairs continuously since July 2002. The petitioner provided copies of the beneficiary's IRS Forms 1099-MISC reflecting that the petitioner paid him \$24,000 in 2003 and 2004.

ANALYSIS

The regulation at 8 C.F.R. § 204.5 (m)(1) states that the beneficiary must have been performing his vocation as a minister for the two-year period immediately preceding the filing of the petition. As set

forth above, the petitioner did not provide evidence required by 8 C.F.R. § 204.5(m)(3)(ii)(B) and has not established that the beneficiary was authorized to perform ministerial duties for the petitioning organization. While the petitioner did submit evidence of the beneficiary's education and experience in an effort to establish that he was qualified to perform the duties of the proffered position, insufficient evidence was submitted to establish that the beneficiary was authorized to conduct religious worship and to perform other duties usually performed by authorized members of the clergy. The petitioner has not, therefore, established that the beneficiary was employed as a minister for the two-year period immediately preceding the filing of the petition. For this reason, the petition must be denied.

The director stated that the petitioner did not establish that it employed the beneficiary during the two-year period preceding the filing of the petition as the beneficiary was issued Forms 1099-MISC for nonemployee compensation. As such, the director stated that the beneficiary worked as an independent contractor and not an employee, and that "self-employment is not qualifying employment for the purpose of this employment based visa preference classification." The regulation did not require the beneficiary to have been an employee during the two-year qualifying period. It only required the beneficiary to have been performing religious work as a minister for the two-year period immediately preceding the filing of the petition. Whether the beneficiary did so as an employee or an independent contractor is not relevant to the issue, and the director's finding to the contrary is withdrawn.

The fourth issue is whether the petitioner submitted sufficient evidence to establish its ability to pay the proffered wage.

PERTINENT FACTS AND PROCEDURAL HISTORY

The petitioner submitted with the filing of the petition a March 1, 2005, letter from the petitioner's co-chairman stating that the beneficiary had been employed by it as an Imam and Director of Religious Affairs since July 2002. The beneficiary was in R-1 religious worker status during that time frame earning \$2,000 per month. In support of that assertion, the petitioner submitted Forms 1099-MISC for 2003 and 2004 showing the petitioner paid the beneficiary \$24,000 in each of those years. The petitioner also submitted copies of monthly salary checks (front and back) written to the beneficiary by the petitioner in the amount of \$2,000 covering the months of July 2002 through May 2003.

The director issued an RFE on August 9, 2005, asking, in part, that the petitioner submit "additional evidence to establish [its ability] to pay the offered wage as of May 7, 2005, the filing date of the petition." In response to that request the petitioner submitted an unaudited financial report covering the time period June 1, 2004, through May 31, 2005. That financial report showed total donations and other income of \$211,270.07, plus a beginning bank balance of \$48,327.86. Total reported expenses for the year were \$217,839.87 yielding a year-end bank balance of \$41,758.06. The listed expenses reported total salaries paid of \$69,933.50. The petitioner also submitted copies (front and back) of monthly salary checks written to the beneficiary by the petitioner of \$2,000 covering the time period of July 2005 through September 2005, along with copies of pay checks for the petitioner's other employees during that same time frame.

In her February 26, 2014, NOIR, the director stated that the petitioner had not provided information requested in the RFE concerning the salaries of all employees dating back to a two year period preceding the filing of the petition. The director further noted that the beneficiary's R-1 status had been approved effective July 31, 2001, yet the beneficiary did not begin to work for the petitioner until 2002, which would indicate that the beneficiary had been "benched" and there was no work available for the beneficiary when the previous petition was approved.

In response to the NOIR, the petitioner stated that it submitted sufficient evidence to establish that it has the ability to pay the proffered wage. The petitioner asserted that evidence has been submitted which shows that the petitioner has employed the beneficiary since 2002, three years preceding the filing of the petition herein, and has continuously paid him the proffered wage since that time.

The petitioner states on appeal that it has established the ability to pay the proffered wage by submitting evidence that it has in fact paid the beneficiary the proffered wage since the filing of the petition.

ANALYSIS

The petition was filed on March 14, 2005. Thus, the petitioner must establish its continued ability to pay the proffered wage as of that date. The petitioner submitted with the filing of the petition a letter from the petitioner's co-chairman stating that the beneficiary had been employed by it as an Imam and Director of Religious Affairs since July 2002 earning \$2,000 per month. The following evidence was submitted to show that the beneficiary was employed by the petitioner and being paid the proffered wage since 2002 and through the petition filing date:

- Copies of monthly salary checks (front and back copied showing checks were negotiated through normal banking channels) from the petitioner to the beneficiary in the amount of \$2000 for the months of July 2002 through May 2003.
- Forms 1099-MISC for 2003 and 2004 showing the petitioner paid wages to the beneficiary in the amount of \$24,000 in each of those years.
- Copies of monthly salary checks (front and back copied showing checks were negotiated through normal banking channels) from the petitioner to the beneficiary in the amount of \$2000 for the months of July 2005 through September 2005.

The petitioner has established, by a preponderance of the evidence, that it has employed the beneficiary continuously since 2002 and paid the beneficiary the proffered wage from that time through the March 2005 filing date of the petition and for six months thereafter. The fact that the petitioner has, in fact, paid the beneficiary the proffered wage establishes its ability to do so. The director's finding to the contrary shall be withdrawn.

CONCLUSION

The petitioner has not submitted sufficient evidence to establish 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 as required by regulation. Nor has the petitioner submitted sufficient evidence to establish that the petitioner is authorized to conduct religious worship and to perform other duties usually performed by authorized members of the clergy or that the beneficiary worked as a minister in the petitioner's denomination for the two year period immediately preceding the filing of the petition. For these reasons, the director's decision revoking approval of the petition will be affirmed.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The December 10, 2005, approval of the petition remains revoked.