U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27501237

Date: AUG. 16, 2023

Appeal of California Service Center Decision

Form I-360, Petition for Special Immigrant Religious Worker

The Petitioner, a religious organization, seeks to classify the Beneficiary as a special immigrant religious worker to perform services as an associate pastor. *See* Immigration and Nationality Act (the Act) section 203(b)(4), 8 U.S.C. § 1153(b)(4). This immigrant classification allows non-profit religious organizations, or their affiliates, to employ foreign nationals as ministers, in religious vocations, or in other religious occupations, in the United States. *See* Section 101(a)(27)(C)(ii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii).

The Director of the California Service Center denied the petition, concluding that the record did not establish that the Beneficiary possessed the requisite two-year qualifying religious work experience. *See* 8 C.F.R. § 204.5(m)(2), (4). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Non-profit religious organizations may petition for foreign nationals to immigrate to the United States to perform full-time, compensated religious work as ministers, in religious vocations, or in other religious occupations. The petitioning organizations must establish that the foreign national beneficiary meets certain eligibility criteria, including membership in a religious denomination and continuous religious work experience for at least the two-year period before the petition filing date. *See generally* section 203(b)(4) of the Act (providing classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act).

The regulation at 8 C.F.R. § 204.5(m) provides, in pertinent part, that in order to be eligible for classification as a special immigrant religious worker, a foreign national must:

(2) Be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position in one of the following occupations as they are defined in paragraph (m)(5) of this section:

(i) Solely in the vocation of a minister of that religious denomination;

(ii) A religious vocation either in a professional or nonprofessional capacity; or

(iii) A religious occupation either in a professional or nonprofessional capacity.

. . . .

(4) Have been working in one of the positions described in paragraph (m)(2) of this section, either abroad or in lawful immigration status in the United States,[1] and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. The prior religious work need not correspond precisely to the type of work to be performed.

The regulation at 8 C.F.R. § 204.5(m)(11) addresses the evidentiary requirements to establish prior religious work experience. It provides:

(11) *Evidence relating to the alien's prior employment.* Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work, must have occurred after the age of 14 . . . . If the alien was employed in the United States during the two years immediately preceding the filing of the application and:

(i) Received salaried compensation, the petitioner must submit IRS documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of income tax returns.

(ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.

(iii) Received no salary but provided for his or her own support, and provided support for any dependents, the petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS.

[1] U.S. Citizenship and Immigration Services (USCIS) no longer requires that the qualifying religious work experience for the two-year period, described in 8 C.F.R. § 204.5(m)(4) and (II), be in lawful immigration status. See USCIS Policy Memorandum PM-602-0119 *Qualifying U.S. Work Experience for Special Immigrant Religious Workers* 2 (July 5, 20 15), http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2015/2015-0705_Lawful_Status_PM_Effective .pdf (USCIS Policy Memorandum PM-602-0119).

II. ANALYSIS

The Beneficiary entered the United States with a tourist visa on June 13, 2016, and filed a petition to change status to R-1 on December 7, 2016. The Beneficiary's R-1 petition was subsequently approved valid from March 19, 2018, to December 31, 2019. On November 25, 2019, the Petitioner filed the instant petition to obtain the special immigrant religious worker classification.

With the initial petition, the Petitioner provided the Beneficiary's 2018 Form 1099-MISC, Miscellaneous Income, and two paycheck stubs dated April 30, 2018, and May 21, 2018. The Director, finding these documents insufficient to demonstrate two years of full time, compensated work experience, issued a request for evidence (RFE) pursuant to 8 C.F.R. § 204.5(m)(11).

In response to the RFE, the Petitioner offered the Beneficiary's tax return transcripts from 2018, 2019, and 2020, and payroll records from 2018, 2019, 2020, and 2021. The Petitioner also stated on record that "[the Beneficiary] has been working as an Associate Pastor of Evangelism and Congregational Care here in the United States since March 19, 2018, after the approval of his R1 visa." However, the Petitioner did not provide tax returns or payroll records from 2017.

The Director denied the petition concluding that the Petitioner did not demonstrate the Beneficiary possessed the requisite full time, compensated work experience during the two years immediately preceding the filing of this petition, which spans from November 26, 2017, to November 25, 2019. Specifically, the Director determined that the Petitioner's payroll summary showed that the Beneficiary was compensated starting on April 3, 2018, and there was no verifiable documentation showing that the Beneficiary was compensated from November 26, 2017.

The regulations require that the qualifying two years of work experience must be both full-time and compensated. 8 C.F.R. § 204.5(m)(2), (4). The regulations further require the Petitioner to submit evidence of salaried or non-salaried compensation with verifiable IRS documentation for the qualifying experience occurred in the United States. 8 C.F.R. § 204.5(m)(11). Here, the record contains payroll and other verifiable IRS documentation showing that the Petitioner compensated the Beneficiary since April 2018, but lacks verifiable documentation showing that the Beneficiary worked and received compensation from November 26, 2017, until March 2018.

On appeal, the Petitioner claims for the first time that the Beneficiary "was given benevolence" from November 26, 2017, until March 2018 "because the Beneficiary's R-1 visa was not approved until March 2018." The Petitioner contends "[f]inding that Beneficiary did not meet the vocation requirement simply because Appellant did not produce paystubs or traditional payroll records for 2017 was an error." The Petitioner then submits with the appeal a one-page "Hands-On World Mission Benevolence Report" indicating it issued biweekly payments of $600 to the Beneficiary from December 2016 to April 2018 but provides no explanation as to why this evidence was not previously submitted with its initial petition or RFE response.

The Director's RFE specifically stated that the evidence of record, particularly the tax documentation, did not establish that the Beneficiary had worked in a qualifying position for the two years immediately preceding the filing of the petition, and the Petitioner was provided ample time to submit additional evidence. The Petitioner submitted all payroll records and tax records from 2018 but omitted such

documentation from 2017, though required under 8 C.F.R. § 204.5(m)(11). Here, the Petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency. Therefore, we will not accept this new evidence offered for the first time on appeal, as we generally limit our decision to the evidence in the record at the time of the Director's unfavorable decision. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

Furthermore, the Petitioner states that the Beneficiary worked "in the vocation of a religious worker" or as a "care evangelist" after arriving in the United States in 2016 and had been working "in the similar position" since 2014 while in Nigeria. Yet the Petitioner also claims that from November 26, 2017, until March 2018, the Beneficiary was "engaged as a trainee status in the church." The record does not contain any description of the Beneficiary's work duties, work hours, or position title regarding this "trainee status." We find that the Petitioner has not offered consistent and detailed information about the Beneficiary's work experience during the period in which the Beneficiary was in tourist status from November 26, 2017, until March 2018. The Petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

We also note that subparagraph (iii) of 8 C.F.R. § 204.5(m)(11) allows for the submission of evidence of self-support. In elaborating on this issue in the final rule, however, USCIS determined that the sole instances where foreign nationals may be uncompensated are those who are "participating in an established, traditionally non-compensated, missionary program." *See* Special Immigrant and Nonimmigrant Religious Workers Final Rule and Notice, 73 Fed. Reg. 72276, 72278 (Nov. 26, 2008). The Petitioner has neither claimed nor established that the Beneficiary was participating in such a program.

Based on the foregoing, we conclude the Petitioner has not demonstrated the Beneficiary has the required two years of full-time, compensated religious work experience. As the Petitioner has not established eligibility for the benefit, we decline to address other claims made by the Petitioner as it would not change the outcome of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n. 7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not established, by a preponderance of the evidence, its eligibility to classify the Beneficiary as an immigrant religious worker. It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Here, that burden has not been met.

ORDER: The appeal is dismissed.