



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 29024460

Date: DEC. 05, 2023

Appeal of California Service Center Decision

Form I-360, Petition for Special Immigrant Religious Worker

The Petitioner, an Islamic center, seeks to classify the Beneficiary as a special immigrant religious worker to perform services as an imam. *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 has the requisite two-year qualifying religious work experience according to 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. Foreign nationals may self-petition for this classification. *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, 2015), 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 instant petition was filed on July 12, 2021, to classify the Beneficiary as a special immigrant religious worker. On the Form I-360, Petition for Special Immigrant Religious Worker, the Petitioner indicated that the Beneficiary arrived in the United States on December 3, 2019, in tourist status and was never in R-1 nonimmigrant religious worker status prior to filing this immigrant petition.

The Director issued a notice of intent to deny (NOID) on May 11, 2022, as the record did not contain the required evidence of the qualifying prior religious work experience and verifiable documentation of the Petitioner's intent to compensate the Beneficiary. The Director ultimately denied the petition on the sole ground that the Petitioner did not demonstrate the Beneficiary possessed the required two years of prior religious work experience. 8 C.F.R. § 204.5(m)(2), (4). Specifically, the Director determined that the various affidavits submitted in response to the NOID demonstrated that the Beneficiary was employed full time as an imam but did not support that the Beneficiary received compensation, either salaried or non-salaried, from the Petitioner during the qualifying period, from July 2019 to July 2021.

According to 8 C.F.R. § 204.5(m)(4), the Petitioner must demonstrate the Beneficiary's continuous work experience for at least two years immediately preceding the filing of the petition. At the same time, such two years of continuous work experience must be both full-time and compensated according to 8 C.F.R. § 204.5(m)(2). In addition, the Petitioner must 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). If the Beneficiary was employed outside the United States during the qualifying two years, the petitioner must submit comparable evidence of the religious work. *Id.*

With the appeal, the Petitioner offers the same notarized affidavits previously submitted, along with the employment letter from Saudi Arabia dated June 1, 2022, also already on record. The affidavits, all dated in June 2022, are from the petitioning organization's board of trustees, the signatory, the Beneficiary's father-in-law, and an individual named [REDACTED] who appears to be a member of the mosque.²

The Petitioner claims that the Director erred in dismissing the notarized affidavits as "unsupported statements without supporting documentary evidence"³ and states that the affidavits "were not mere statements, but notarized letters made under penalty of perjury." We acknowledge that notarized statements are proper evidence but disagree with the Petitioner's characterization that the Director "rejected" these affidavits. In the denial, the Director evaluated and analyzed the contents of each affidavit to determine whether the Beneficiary received compensation during the qualifying period, as required by the regulations.

We agree with the Director that the affidavits on record indicate that the Beneficiary worked as an imam full time but did not receive monetary compensation from July 2019 to July 2021. The affidavit from the organization's board of trustees states that "we decide to assign [the Beneficiary] as a

² The affidavit of [REDACTED] does not state his relationship to the Beneficiary or the petitioning organization, but the appeal brief refers to this individual as a "member."

³ We note that the Director cited to this language from *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972) to illustrate the need for independent and objective evidence that corroborate the affidavits.

volunteer full time Imam in our Center until the petition get approved, then he will be a full time, Imam.” The signatory also submitted an affidavit stating that the Beneficiary “is a full time Imam at [REDACTED] but did not receive any salary from the center and will not until the petition of employment is approved.” The Petitioner, on appeal, acknowledges that the Beneficiary worked “without any remuneration or compensation that would violate Beneficiary’s visitor visa” and that “the Beneficiary was employed voluntarily for a portion of the 2-year period prior to July 12, 2021.” Based on these statements, we conclude that the Beneficiary did not receive salaried compensation while working for the petitioning organization.

We also review the record for evidence of any non-salaried compensation provided by the Petitioner, such as housing, food, clothing, transportation. The Petitioner again offers [REDACTED] notarized affidavit dated June 13, 2022, which states that he helps the Beneficiary and his daughter (the Beneficiary’s wife) with food, clothing, and transportation. But this affidavit is from the Beneficiary’s father-in-law and does not demonstrate that the petitioning organization provided non-salaried compensation to the Beneficiary. Similarly, the affidavit from [REDACTED] stating that he will provide rent free housing to the Beneficiary does not sufficiently prove that the Petitioner directly provided housing to the Beneficiary.

The Petitioner also asserts that the evidence included credit card statements showing “unpaid employment of Beneficiary.” The signatory’s affidavit supports that “[REDACTED] gave [the Beneficiary] his credit card to pay his expenses.” However, these credit card statements cover only six months, from January 2022 to June 2022, and do not demonstrate that the Beneficiary received non-salaried compensation from the Petitioner during the qualifying period, from July 2019 to July 2021. Aside from the credit card statements and the affidavits discussed above, the Petitioner has not submitted other evidence to show the Beneficiary’s non-salaried compensation. Therefore, we conclude that the Petitioner has not sufficiently demonstrated the Beneficiary received non-salaried compensation from the petitioning organization during the qualifying period.

The Petitioner further claims that the Director erred by applying a higher standard of proof than the preponderance of the evidence and “imposed additional requirements on the Petitioner to prove Beneficiary’s eligibility.” The Petitioner states: “[s]uch evidence (affidavits along with credit card statements) should have been found sufficient to indicate that the 2 year period of employment was satisfied by the Beneficiary under the appropriate burden of proof.” However, the Petitioner does not specifically elaborate where the Director created the higher standard of proof or imposed additional requirements. The regulations, summarized above, require a petitioner to establish that the beneficiary worked in a qualifying, full-time and compensated position for the two years immediately preceding the filing of the petition. Here, the Director did not create any additional requirements or raised the burden of proof but properly adhered and applied the requirements set in the regulations to the facts of the case.

On appeal, the Petitioner concludes that “compensation is not an absolute necessity under 8 C.F.R. 204.5(m), as some case law has held”⁴ and refers to *Shia Ass’n of Bay Area v. U.S.*, 849 F. Supp. 2d

⁴ The Petitioner also mentions our non-precedent decision which concludes that unauthorized change of employers during the qualifying two-year period does not disqualify the beneficiary for the special immigrant religious worker classification. This decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. See 8 C.F.R. § 103.3(c). Furthermore, the case presents a different issue not directly on point with the instant case.

916 (N.D. Cal. 2012), a landmark case in which the court invalidated the language in 8 C.F.R. § 204.5(m)(4) requiring the two years of prior religious work to be in lawful status as it conflicts with Section 245(k) of the Act. We agree with the Petitioner's reading of the case in that there is no longer a requirement that the Beneficiary must have been working in lawful status during the qualifying two years. However, the issue presented here is whether the Beneficiary's prior religious work during the qualifying two years be compensated and verified,⁵ not whether the Beneficiary worked without authorization during the qualifying period or such unauthorized work bars him from obtaining the special immigrant visa classification. Therefore, we find the Petitioner's assertion regarding compensation not persuasive.

As discussed above, the record lacks sufficient evidence that the Beneficiary received salaried or non-salaried compensation from the Petitioner during the requisite period. Therefore, we find that the Petitioner has not demonstrated that the Beneficiary has the required two years of full-time, compensated religious work experience with verifiable IRS documents. *See* 8 C.F.R. § 204.5(m)(2), (4), and (11).

III. CONCLUSION

The Petitioner has not established, by a preponderance of the evidence, its eligibility to classify the Beneficiary as an immigrant religious worker. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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.

⁵ *See also* Special Immigrant and Nonimmigrant Religious Workers, 72 Fed. Reg. 20442, 20446-47 (proposed Apr. 25, 2007) (where the preamble to the proposed rule states that the revised requirements that the foreign national's work be compensated by the employer safeguard integrity of the religious worker program and provide "objective means of confirming the legitimacy of and commitment to the religious work, . . . and of the employment relationship").