



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

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

In Re: 28471080

Date: SEP. 27, 2023

Certification 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 a “Vietnamese Buddhist Monk.” *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 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).

In the latest decision, the Director of the California Service Center denied the petition, finding the record does not establish that the Beneficiary possesses two years of qualifying religious work experience and that the Petitioner submitted verifiable evidence of its intent to compensate the Beneficiary. The matter is now before us on certification.

In the Notice of Certification, the Director notified the Petitioner that it could submit a brief or other written statement for consideration within 30 days. However, no brief or other communication has been received to date, and we will consider the record to be complete as it now stands.

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 affirm the Director’s decision denying the petition.

I. LAW

Foreign nationals who perform full-time, compensated religious work as ministers, in religious vocations, or in religious occupations for non-profit religious organizations in the United States may be classified as special immigrant religious workers. The petitioner 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)(ii) of the Act).

The regulation at 8 C.F.R. § 204.5(m)(2) specifies that the petitioner must show that the beneficiary is “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”:

- (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.

In addition, the regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to demonstrate that the beneficiary has worked “in one of the positions described in [8 C.F.R. § 204.5(m)(2)] . . . for at least the two-year period immediately preceding the filing of the petition.”

The regulation at 8 C.F.R. § 204.5(m)(10) further requires that a petitioner must submit verifiable evidence of how it intends to compensate the foreign national, whether through salaried or non-salaried compensation. Such evidence may include evidence of previous compensation for similar positions, budgets showing money set aside for salaries, or other evidence acceptable to USCIS. If IRS documentation is available, it must be provided, and if not, an explanation of its absence must be submitted along with comparable, verifiable evidence.

Finally, the regulation at 8 C.F.R. § 204.5(m)(12) discusses inspections, evaluations, verifications and compliance reviews of religious worker petitions and states:

The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization’s facilities, an interview with the organization’s officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, or satellite locations, or the work locations planned for the applicable employee.

II. PROCEDURAL HISTORY

The Petitioner initially filed the Form I-360, Petition for Special Immigrant Religious Worker, on November 23, 2018. The Director issued a request for evidence (RFE) on May 13, 2019. In the RFE, the Director notified the Petitioner that USCIS received derogatory information from “a source credibly representing him-or herself as a member of [the petitioning] organization’s corporate leadership” and provided the Petitioner an opportunity to rebut the informant’s allegation that the Beneficiary has not been working full time at the petitioning organization and may be engaged in unauthorized compensated work outside the organization.

In response to the Director's RFE, the Petitioner provided a document dated May 20, 2019, containing names, addresses, and phone numbers of 151 individuals who are purportedly members of the petitioning organization and can attest to the Beneficiary's employment at the organization. This document indicated that "the undersigned members of the Vietnamese American Buddhist Association of [redacted] Temple, would like [redacted] to stay at our temple as a religious worker." When USCIS officer(s) made calls to the randomly selected individuals on this list for verification, only three out of 19 individuals contacted answered the call, and those three all denied knowing the organization or the Beneficiary.

Accordingly, the Director determined that the Petitioner did not provide sufficient evidence to rebut the derogatory information and denied the petition. In the denial letter, the Director stated that the submitted evidence was not credible and "[t]hat you would falsely represent individuals who have no knowledge of your organization as members of your organization casts doubt on representation made in the petition generally, and with respect to the beneficiary's past work for your organization in particular, and no weight can be accorded to any representation made in the absence of independent objective evidence."

On appeal, the Petitioner contended that a language barrier resulted in miscommunication with these three individuals, as its congregants do not speak English well. The Petitioner also theorized that USCIS may have caused misunderstanding by not using the Vietnamese name for the organization or the Beneficiary's religious name that is different from his legal name. However, we dismissed the appeal, concluding that the Petitioner did not provide any corroborating evidence of such miscommunication and any other independent and objective evidence to overcome the allegations made by the unidentified informant, that the Beneficiary has not worked on a full-time basis during the qualifying two-years and engaged in outside employment.

The Petitioner then submitted a combined motion to reopen and reconsider. As the Petitioner provided new documents on motion, we remanded the petition for further consideration with a request that the Director certify its decision to us. The Director has issued a new decision denying the petition, finding the record does not establish that the Beneficiary possesses two years of qualifying religious work experience and that the Petitioner submitted verifiable evidence of its intent to compensate the Beneficiary.

III. ANALYSIS

We agree with the Director that the evidence submitted on motion did not overcome the adverse credibility inference and the record does not establish that the Beneficiary possesses two years of qualifying religious work experience. However, we will withdraw the Director's decision that the Petitioner has not submitted verifiable evidence of its intent to compensate the Beneficiary.

A. Compensation

On motion, the Petitioner submitted copies of handwritten income and expenditure line items from January 2017 to September 2018 showing that it set aside money to support the Beneficiary's living expenses. These documents corroborate the figures shown on the 2017 and 2018 income and expense summaries submitted with the initial petition. In addition, the Petitioner submitted photographs of the

Beneficiary's living quarter at the temple and the Bhikkhus' Code of Discipline¹ that explains how Buddhist monks (bhikkhus) are not allowed to keep money for themselves. These documents substantiate the claim made by the Petitioner that the Beneficiary will only receive "food, shelter, clothing, and payment for living expenses." Although the Director determined that this compensation arrangement is inconsistent with the Petitioner's statement that some of these supports will be provided by the temple members, the regulation at 8 C.F.R. § 204.5(m)(7)(xiii) allows the funds to pay the Beneficiary's compensation to include "reasonable donations or tithings to the religious organization." Therefore, we find that the Petitioner has provided sufficient evidence to compensate the Beneficiary by the preponderance of evidence standard.

B. Two-Years of Continuous Full-Time Employment

Now we turn to the Director's conclusion that the Petitioner does not possess the qualifying two years of continuous full-time employment. The issue before us is whether the Petitioner provided independent and objective evidence to overcome the adverse credibility inference raised by the allegations from an unidentified informant and the failed verification of the evidence submitted by the Petitioner after three individuals contacted by USCIS denied any knowledge of the Beneficiary or the petitioning organization.

The Petitioner has repeatedly claimed that the three individuals contacted by USCIS did not know the organization or the Beneficiary due to "a language barrier" or "translation-related misunderstanding." However, the evidence on a combined motion does not offer any corroborative evidence of such miscommunication, and the Petitioner has not addressed the fact that these three individuals spoke fluent English on the phone according to USCIS officer(s) who made the calls.

With the combined motion, the Petitioner submitted a handwritten affidavit dated June 5, 2021, from an individual named [REDACTED]. The affidavit provides a completely different account of why the three individuals added their names to the contact list without any knowledge of the organization or the Beneficiary.² However, the Petitioner does not explain who [REDACTED] is and how this person is associated with the organization or the Beneficiary. The Petitioner also does not indicate how it obtained this affidavit or why it did not provide this affidavit when the Director first raised this issue. Furthermore, the Petitioner does not address or explain the inconsistency between the explanation given by [REDACTED] affidavit and the Petitioner's previous claims that this is a misunderstanding stemming from a simple language barrier.

The regulation specifies that the supporting evidence submitted "may be verified by USCIS through any means determined appropriate by USCIS." See 8 C.F.R. § 204.5(m)(12). In this case, the Petitioner has not resolved the discrepancies raised in the verification process 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.

¹ In its letter dated November 15, 2018, the Petitioner included the website link to the Bhikkhus' code of discipline at <https://www.accesstoinsight.org/tipitaka/vin/sv/bhikkhu-pati.html>.

² [REDACTED] explains that the contact list was left with a friend and the friend allowed these three individuals to sign the list without understanding the content or the nature of the list.

The Petitioner also contends that the derogatory information from an unidentified informant appears to be “a misunderstanding or miscommunication.” At the same time, the Petitioner “acknowledges that Beneficiary visited other temples on their invitation and that as a Buddhist monk, it was Beneficiary’s duty to do so.” The Petitioner claims that the Beneficiary did not receive any compensation for his visits as it would be against the customs and rules of a Buddhist monk.

However, the Beneficiary’s schedule submitted with the initial filing, entitled “Current Religious Work Schedule for [REDACTED],” does not include any duties discharged to the Beneficiary to spend time visiting other temples on invites. The Beneficiary’s schedule submitted with the motion is an exact copy of the previously submitted schedule and does not indicate that the Beneficiary travels to other temples. In addition, the Petitioner has not submitted any evidence that the Beneficiary, as a monk, would be required to travel to other temples, other than to visit the congregants for funeral services and other ceremonies. The Petitioner has not explained this discrepancy on appeal or on motion, or offered independent, objective evidence to resolve it. *Id.*

The Petitioner has submitted other evidence on record such as photographs of the Beneficiary occupying the living quarters of the Petitioner’s temple and presiding over various ceremonies with the members of the petitioning organization. The Petitioner also submitted a series of letters from various individuals who claim to be the member of the petitioning organization attesting to the Beneficiary’s employment. However, these photographs and letters do not provide the necessary corroboration that the Petitioner has worked full time at the organization or that he worked unauthorized outside the petitioning organization, given the unresolved inconsistencies and adverse credibility inference discussed above.

The undated photographs verify that the Beneficiary resides at the temple and performs activities but do not prove that he has not engaged in any unauthorized work outside the temple. The letters from the purported members of the petitioning organization verify that they know the Beneficiary and has seen him perform religious activities at the temple. However, the letters do not explain how these members have direct and personal knowledge of the Beneficiary’s work schedule and activities outside the temple when they attend the services on evenings or on weekends only two or three times a week. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Furthermore, none of these letters claim to be the three individuals who denied knowledge of the petitioning organization or the Beneficiary.

For these reasons, we conclude that the Petitioner did not provide sufficient evidence to overcome the credibility issue and therefore, did not establish that the Beneficiary has been continuously employed in the full-time capacity as a religious worker for the qualifying two years, from November 2016 to November 2018, according to 8 C.F.R. § 204.5(m)(2), (4).

IV. 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 petition is denied.