U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34489135

Date: DEC. 13, 2024

Appeal of California Service Center Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Religious Worker)

The Petitioner, who is also the foreign national beneficiary,[1] seeks classification as a special immigrant religious worker to perform services as a deacon (religious occupation) for [redacted] ("employer" or "church"). *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 Petitioner possessed the requisite two-years of 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

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) of the Act).

[1] Part 1 of the Form I-360, Petition for Special Immigrant Religious Worker, identifies the foreign national beneficiary as the Petitioner and the petition was signed not by any official of the church, but by the beneficiary himself. The regulation at 8 C.F.R. 204.5(m)(6) permits the I-360 petition to be filed "either by the alien or by his or her prospective United States employer."

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:
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> (i) Solely in the vocation of a minister of that religious denomination;
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> (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,[2] 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:
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> (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

[2] 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 (11), be in lawful immigration status. *See generally* 6 *USCIS Policy Manual* H.2(C)(2), https://www.uscis.gov/policymanual.

documents signed by an attorney, or other verifiable evidence acceptable to USCIS.

In addition, the regulation 8 C.F.R. § 204.5(m)(7) requires an attestation from "[a]n authorized official of the prospective employer of [the foreign national] seeking religious worker status," stating:

> (xi) That the alien will not be engaged in secular employment, and any salaried or non-salaried compensation for the work will be paid to the alien by the attesting employer; and
>
> (xii) That the prospective employer has the ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become public charges, and that funds to pay the alien's compensation do not include any monies obtained from the alien, excluding reasonable donations or tithing to the religious organization.

II. ANALYSIS

The instant petition was filed on October 25, 2023. The Director determined that the evidence did not establish the Petitioner had the requisite two years of continuous, full-time, and compensated work experience immediately preceding the filing date of the petition, from October 25, 2021 to October 24, 2023. Specifically, the Director concluded that the Petitioner did not submit any verifiable evidence of his compensation, such as "IRS Form W-2s [Wage and Tax Statement], timecards, paystubs, payroll reports, or similar documentation."

The Petitioner initially described his proposed compensation on the Form I-360 as "Florida State minimal wage" without providing any further details. The record contains a letter from [redacted] the church's women's pastor, stating that the Petitioner has been working in a full-time paid position as a deacon since January of 2019 and another letter from [redacted] the church's senior pastor, stating that the Petitioner has worked as a deacon at the church for more than two years. The senior pastor also indicated in a separate letter that W-2 forms are not available because the Petitioner "has been sponsored by the business company name[d] [redacted] and [redacted] has provided payments for his housing/boarding as well as his living expenses during the entire time he has served/worked in our church." [3] The Director determined that these attestation letters alone are insufficient to demonstrate that the Petitioner worked in a full-time, compensated religious position during the qualifying period.

On appeal, the Petitioner maintains that he has demonstrated that he possesses the requisite two years of religious work experience. In support, the Petitioner submits two additional letters from the church's co-workers, both attesting that the Petitioner is "an active church member since January 2019" and "works at our church in a Full-Time (35-hour per week) position" as a deacon since January 2019. However, the affidavits from the church representatives do not contain any details regarding the Petitioner's compensation, either salaried or non-salaried, during the qualifying two

[3] [redacted] appear to be owned or operated by the Petitioner's wife as she signed the affidavit of support as the director of the company.

years. The Petitioner has not provided any other verifiable documentation that he received compensation from his employer.

Instead, the Petitioner submits an updated letter from the church's senior pastor reiterating that the Petitioner received financial support from a different source other than the employer during the relevant two years. The senior pastor explains that the Petitioner "has been financially supported by Mrs. [redacted] (his wife)" with "housing, boarding, and living expenses while serving as a religious worker for our church." The Petitioner resubmits the bank statements of [redacted] and the signed affidavit from his wife. It appears that the Petitioner is claiming that he self-supported during the qualifying period and thus he does not need to show compensation from the employer.

While the regulation at 8 C.F.R. § 204.5(m)(11)(iii) allows evidence of compensation during two-year period to include documentation confirming self-support, USCIS has specified that individuals who rely on self-support to establish that they are "participating in an established, traditional non-compensated missionary program." Special Immigrant and Nonimmigrant Religious Workers Final Rule, 73 Fed. Reg. 72276, 72278, 2008 WL 4997485 (Nov. 26, 2008); 8 C.F.R. § 214.2(r)(11)(ii) (specifying the regulatory requirements that a petitioner must establish to classify a foreign national as a nonimmigrant R-1 religious worker).[4] Here, neither the Petitioner nor the employing church has claimed that the Petitioner was participating in such a program. Accordingly, the documentation concerning the Petitioner's self-support in the record does not confirm that he possesses the requisite prior religious work experience required under 8 C.F.R. § 204.5(m)(2) and (4).

Beyond the Director's decision, the Petitioner did not submit verifiable evidence of how his prospective employer intends to compensate him or demonstrate that his salaried or non-salaried compensation will be paid by his prospective employer. 8 C.F.R. § 204.5(m)(10); *see also* 8 C.F.R. § 204.5(m)(7) (xi) and (xii) (requiring the attestation that "any salaried or non-salaried compensation for the work will be paid to the alien by the attesting employer"). By signing the employer attestation section of the Form I-360, the senior pastor attested that the church is "willing and able to provide salaried and/or non-salaried compensation at a level that the beneficiary and any dependents will not become a public charge" and "the prospective employer will provide salaried and/or non-salaried compensation."[5] However, the record does not contain any evidence that the Petitioner received compensation from the employer or other verifiable documents showing that the employer has the ability or intent to compensate the Petitioner, such as the church's financial statements or budgets. As the evidence in the record does not support the employer's attestations, the Petitioner has not established that the prospective employer has the ability and intent to compensate him.

Based on the foregoing, we conclude the Petitioner did not demonstrate that the Beneficiary has the required two years of full-time, compensated religious work experience, and furthermore, did not establish how the prospective employer intends to compensate him. Therefore, the Petitioner has not shown eligibility for the requested immigrant classification.

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[4] *See also* 6 USCIS Policy Manual H.2(C)(2) n.62, http://www.uscis.gov/policymanual.

[5] These provisions, as explained in the proposed rule for special immigrant and nonimmigrant religious worker classification, 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." Special Immigrant and Nonimmigrant Religious Workers Proposed Rule, 72 Fed. Reg. 20442, 20446-47 (Apr. 25, 2007).

III. CONCLUSION

The Petitioner has not established, by a preponderance of the evidence, his eligibility for the classification 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.