U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33565101

Date: JAN. 27, 2025

Appeal of California Service Center Decision

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

The Petitioner seeks classification as a special immigrant religious worker. *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 10l(a)(27)(C)(ii) of the Act, 8 U.S.C. § 1 10l(a)(27)(C)(ii).

The Director of the California Service Center denied the petition, concluding that the record did not establish that the Petitioner is eligible for classification as a special immigrant religious worker. 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)(2) states that to be eligible for classification as a special immigrant religious worker, a noncitizen must 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:

(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.

Regarding compensation, 8 C.F.R. §204.5(m)(10) states:

> Evidence relating to compensation. Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

II. ANALYSIS

The Director concluded that the Petitioner did not establish her employer's ability to provide the proffered wages; and that the record did not establish she had been working continuously for at least the 2-year period immediately preceding the filing of the petition. The Petitioner, states "[t]his appeal is necessary as [the Petitioner] is a bona fide religious worker who meets all the requirements. . . ." Upon de novo review, we agree with the Director. The evidence is insufficient to establish the employer can provide the proffered wages to the Petitioner and therefore, the Petitioner is not eligible for classification as a special immigrant religious worker.

On appeal, the Petitioner asserts she is qualified for classification as a special immigrant religious worker. The Petitioner references page two of the Director's decision, stating that any questions about compensation, the hours the proffered position will require, and the title of the position were listed in the job description. We note that the job title and duties changed in the request for evidence (RFE) response. The petition was initially filed stating that the Petitioner would be working as a "worship leader." In the RFE response, the job title changed to "religious event ministry director" and the position's duties changed. A petitioner may not make material changes to a petition that has already been filed in an effort to make a deficient petition conform to USCIS requirements. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998). The Director did not address this inconsistency and therefore we will limit our analysis to the issue of compensation as addressed on appeal.

We acknowledge the job description lists the proffered wage as $25,000 per year and the petition states the employer will compensate the Petitioner with the "Florida legal minimum wage." A self-petitioning religious worker must submit evidence to establish how the prospective employer intends to provide such compensation. This evidence must establish that foreign national will not engage in secular employment, and any salaried or non-salaried compensation for the work will be paid to the foreign national by the attesting employer. 8 C.F.R. §204.5(m)(7)(xi).

The record includes the employer's yearly reports for 2022 and 2023; however, since these are unaudited financial documents, this requires additional, verifiable evidence. *See generally* 6 *USCIS*

Policy Manual H.2(B)(5), https://www.uscis.gov/policy-manual. The record also contains a 2023 W-2 from the senior pastor of the prospective employer. Per the regulation at 8 C.F.R. §204.5(m)(10), past evidence of compensation for similar positions can be used as evidence; however, this is not a similar position to either of the positions the Petitioner may work in and therefore does not corroborate that the employer can provide the proffered wages. Additionally, we note the appeal includes new evidence of the employer's bank statements to "demonstrate [the church's] capacity to pay the beneficiary." The Petitioner also submits new evidence of photographs of her provided room and board. Because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence, we will not consider it for the first time on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial.) We further note that the record contains a lease agreement for the residence in the above referenced photos; however, it is signed by her previous sponsor. Therefore, even if we were to accept the photos, this does not show the employer can pay the proffered wages as this was provided to the Petitioner by her previous sponsor.

The Petitioner asserts the Director erroneously indicated [redacted] would be her sponsor, however, as she states, this was the Petitioner's previous sponsor, and the church will be her sponsor should the petition be approved. This claimed error was, at most, harmless. *See generally Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing cases regarding harmless or scrivener's errors). The error that the Petitioner highlights is in how the Director labeled a piece of evidence. On page three of the decision, the Director lists the provided document as "[a] letter for the president of the [redacted] company attesting that he will sponsor the beneficiary and provide for room and board." We acknowledge that this piece of documentation attests that [redacted] was her previous sponsor, providing for her room and board as well as financial support for other personal expenses. However, in the section below this list, the Director does refer to the same company's income tax return as "from an individual other than your organization" and states compensation must come from the prospective employer and not a third party. This establishes that while the Director may have mislabeled the document, but the Director properly analyzed it and therefore, any error here is considered, at most, harmless.

While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety. The Petitioner has not established, that the prospective employer has the ability to provide the proffered wages. Therefore, she has not established by a preponderance of the evidence, her eligibility for classification as a special immigrant religious worker. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments for eligibility as it would not change the outcome of the appeal. *See INS v. Bagamasbad,* 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

III. CONCLUSION

We conclude that the Petitioner has not established, by a preponderance of the evidence, her eligibility for classification as a special 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.