U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20738594

Date: JUN. 15, 2022

Appeal of California Service Center Decision

Form I-360, Petition for Special Immigrant Religious Worker

The Petitioner, an individual, seeks classification as a special immigrant religious worker to perform services as a minister for his U.S. prospective employer, [redacted] *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).

The Director of the California Service Center denied the petition, concluding that the Petitioner's prospective employer did not complete all the attestations on page 11 of the petition, as required under 8 C.F.R. § 204.5(m)(7) (2017). *See also* 8 C.F.R. § 103.2(a)(1) (stating that "[t]he form's instructions are hereby incorporated into the regulations requiring its submission"). In addition, the Director determined that the Petitioner failed to submit verifiable evidence of how his prospective employer intended to compensate him or that his prospective employer had the ability and intention to compensate him at a level at which he and his accompanying family members would not become public charges. *See* 8 C.F.R. § 204.5(m)(10); 8 C.F.R. § 204.5(m)(7)(xii). Finally, the Director found that the record did not establish the Petitioner possessed the requisite two-year qualifying religious work experience required under 8 C.F.R. § 204.5(m)(4). *See also* 8 C.F.R. § 204.5(m)(2). The Petitioner appeals, submitting supporting evidence and maintaining that he has demonstrated eligibility to be classified as a special immigrant religious worker.

In these proceedings, it is the Petitioner's burden to establish, by a preponderance of the evidence, his or her eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012); *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).[1] Upon *de novo* review, we will dismiss the appeal.

[1] If a petitioner submits relevant, probative, and credible evidence that leads us to believe that the claim is "more likely than not" or "probably" true, he or she has satisfied the preponderance of the evidence standard. *Chawathe*, 25 I&N Dec. at 375-76.

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)(10) discusses evidence that a petitioner must submit to satisfy the compensation requirements:

> *Evidence relating to compensation.* Initial evidence must include verifiable evidence of how the petitioner [prospective employer] 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 [U.S. Citizenship and Immigration Services]. If IRS [Internal Revenue Service] documentation, such as IRS Form W-2 [Wage and Tax Statement] 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.

Additionally, the regulation specifies that a prospective employer must attest that "[it] 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 . . . ." 8 C.F.R. § 204.5(m)(7)(xii).

II. ANALYSIS

Based on the reasons we discuss below, we find that the Petitioner has not established, by a preponderance of the evidence, eligibility to be classified as a special immigrant religious worker.

A. Compensation

The Petitioner has failed to submit verifiable evidence of how his prospective employer intends to compensate him or that his prospective employer has the ability and intention to compensate him at a level at which he and his accompanying family members would not become public charges. *See* 8 C.F.R. § 204.5(m)(10); 8 C.F.R. § 204.5(m)(7)(xii). Page 10 of the petition requires the Petitioner to indicate the "Title of position offered," and to provide a "Detailed description of the beneficiary's proposed daily duties" as well as a "Description of the proposed salaried and non-salaried compensation" for the offered position. The Petitioner answered "N/A" to these, as well as other, items concerning the proposed employment.

In support of his petition, the Petitioner has offered an undated letter from an organization in Nigeria, which shares the same name as his U.S. prospective employer, claiming that the Nigerian organization

has "promised to pay the sum of $1,010 . . . every month to pay for his house rent, excluding the feeding allowance." In another undated letter, the Nigerian organization alleges that it has "promised to pay the sum of [$1,600] one thousand and six hundred dollars every month to pay for his house rent, including the feeding allowance as compensation for the ministries work." The Petitioner has also presented a document from the rental property, showing that he had paid his monthly rent of $1,010 between November 2016 and June 2017. Neither this document nor other evidence in the record confirms that the Petitioner's U.S. prospective employer or the Nigerian organization, rather than the Petitioner, paid his monthly rent.

On appeal, the Petitioner claims that his U.S. prospective employer is a "branch" of the Nigerian organization. He presents a November 2021 letter from the Nigerian organization, stating that it "mandate[s its] Texas Branch to compensate [the Petitioner] with additional Two Thousand (2,000) Dollars minimum plus Housing and Transport allowance." The Petitioner also presents on appeal a September 2017 letter from the Nigerian organization, stating that it "agreed to compensate [him] with Two Thousand Dollars Monthly, plus One Thousand Five Hundred Dollars (2,000+1,500) Dollars for Housing and for allowance respectively."

Even if we accept that the Petitioner's U.S. prospective employer is a "branch" of the Nigerian organization, and that both organizations may compensate the Petitioner under the regulation, the record lacks verifiable evidence on compensation. *See* 8 C.F.R. § 204.5(m)(10). The Petitioner submits copies of statements of his savings account in Nigeria, indicating that between February 2015 and February 2017, and then between May 2021 and October 2021, he received from the Nigerian organization payments in Naira (the Nigerian currency), categorized as "monthly salary." The Petitioner also offers documents from the Nigerian organization that itemize his compensation and deductions in Naira between May and October 2021. These documents indicate that the Petitioner's Nigerian account received funds in Naira.[2] The evidence, however, does not constitute verifiable evidence of how the Nigerian organization intends to compensate him in the United States with either $1,010 in monthly rental payments or $1,600 in monthly rental payments plus "feeding allowance."

Additionally, these documents do not constitute verifiable evidence of how his U.S. prospective employer intends to compensate him monthly with $2,000 "plus Housing and Transportation allowance." Indeed, while the Petitioner has offered documents that purportedly list donations his U.S. prospective employer had received between April 2017 and June 2017, as well as between December 2020 and October 2021, he has not presented verifiable documentation, such as bank statements, concerning the financial status of his U.S. prospective employer.

Moreover, the record lacks compensation related evidence referenced in the regulation. For example, the Petitioner has not presented evidence that his U.S. prospective employer had paid "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." 8 C.F.R. § 204.5(m)(10). In addition, the Petitioner claims on page 3 of the petition that he has been in the United States since April 2016, approximately ten months before he filed the instant petition.

[2] The Petitioner has not presented bank statements or other evidence confirming that he had received compensation between March 2017 and May 2021.

He, however, has not offered any IRS documentation concerning his compensation or an explanation for its absence. *See id.*

Furthermore, the Petitioner has not established that, at the time he filed the petition in February 2017, his U.S. prospective employer's ability and intention to compensate him at a level at which he and his accompanying family members would not become public charges. *See* 8 C.F.R. § 204.5(m)(7)(xii); *see also* 8 C.F.R. § 204.5(m)(10); 8 C.F.R. § 103.2(b)(1) (providing a "petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication"). The Petitioner indicated on pages 4 and 5 of the petition that his accompanying family members would include his spouse and six adult children. On appeal, the Petitioner offers a November 2021 letter from the Nigerian organization, stating "all his children are adults and not dependent on him for sustenance." Even if we accept this assertion on appeal, 125% of the 2017 United States Department of Health and Human Services (HHS) Poverty Guidelines for a household of two (the Petitioner and his spouse) is an annual income of $20,575.[3] As such, the proposed monthly compensation of either $1,010 or $1,600 falls below 125% of the HHS Poverty Guidelines, and does not support the Petitioner's U.S. prospective employer's attestation on page 11 of the petition that it would compensate him at a level that he and his dependent (his spouse) would not become public charges. *See* 8 C.F.R. § 204.5(m)(7)(xii).

In a November 2021 letter that the Petitioner submits on appeal, over four and a half years after he initially filed the petition, the Nigerian organization stated that it "mandate[s its] [redacted] Texas Branch to compensate [the Petitioner] with additional Two Thousand (2,000) Dollars minimum plus Housing and Transport allowance." On appeal, the Petitioner also offers for the first time a September 2017 letter from the Nigerian organization, claiming that it will pay him $2,000 plus $1,500 "for Housing and for allowance." These documents postdate the Petitioner's filing of the petition in February 2017, and constitute an impermissible material change to the petition. They therefore do not establish the Petitioner's eligibility for the petition at the time he filed the petition. *See Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Assoc. Comm'r 1998) (noting that USCIS "cannot consider facts that come into being only subsequent to the filing of a petition" and that "a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to [USCIS] requirements"); *see also* 8 C.F.R. § 103.2(b)(1).

Based on these reasons, the Petitioner has failed to submit verifiable evidence of how his U.S. prospective employer intends to compensate him or that his U.S. prospective employer has the ability and intention to compensate him at a level at which he and his accompanying family members would not become public charges. *See* 8 C.F.R. § 204.5(m)(10); 8 C.F.R. § 204.5(m)(7)(xii). Accordingly, the Petitioner has not satisfied the compensation requirements.

[3] USCIS uses 125% of the HHS Poverty Guidelines to determine if a foreign national will likely become a public charge. According to the guidelines, in 2017, $16,460 × 125% = $20,575 was the minimum income requirement for a household of two members. *See 2017 HHS Poverty Guidelines*, https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines/prior-hhs-poverty-guidelines-federal-register-references/2017-poverty-guidelines/2017-poverty-guidelines-computations; *see also I-864P, 2020 HHS Poverty Guidelines for Affidavit of Support*, https://www.uscis.gov/i-864p.

B. Other Issues

As discussed, the Director denied the petition on other grounds, including finding that the Petitioner's U.S. prospective employer did not complete all the attestations on page 11 of the petition required under 8 C.F.R. § 204.5(m)(7) (2017), *see also* 8 C.F.R. § 103.2(a)(1), and that the record did not establish the Petitioner possessed the requisite two-year qualifying religious work experience required under 8 C.F.R. § 204.5(m)(4). *See also* 8 C.F.R. § 204.5(m)(2). In light of our determination that the Petitioner has not satisfied the compensation requirements, we need not address the Director's alternate grounds for denial. We will instead reserve these issues for future consideration should the need arise.

III. CONCLUSION

The Petitioner has not established, by a preponderance of the evidence, his eligibility to be classified as a special immigrant religious worker. Specifically, he has not satisfied the compensation requirements. *See* 8 C.F.R. § 204.5(m)(7)(xii), (10). In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act; *Skirball Cultural Ctr.*, 25 I&N Dec. at 806. Here, that burden has not been met.

ORDER: The appeal is dismissed.