U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17202120

Date: MAR. 8, 2022

Appeal 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 missionary. *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 the record did not establish that the Beneficiary possessed the requisite two-year qualifying religious work experience, required under 8 C.F.R. § 204.5(m)(4) (2019). *See also* 8 C.F.R. § 204.5(m)(2). The Petitioner appeals, maintaining that it has shown eligibility to classify the Beneficiary as a special immigrant religious worker.

In these proceedings, it is the Petitioner's burden to establish, by a preponderance of the evidence, its 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.

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).

[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, it has satisfied the preponderance of the evidence standard. *Chawathe*, 25 I&N Dec. at 375-76.

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." Under 8 C.F.R. § 204.5(m)(2), qualifying experience is "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.

II. ANALYSIS

The Petitioner has not submitted sufficient evidence demonstrating its eligibility to classify the Beneficiary as a special immigrant religious worker because it has not shown that the Beneficiary possesses the requisite two-year religious work experience. *See* 8 C.F.R. § 204.5(m)(4) and 8 C.F.R. § 204.5(m)(2). As noted, the Petitioner must establish that the Beneficiary worked as a full-time, compensated religious worker "continuously for at least the two-year period immediately preceding the filing of the petition." 8 C.F.R. § 204.5(m)(4). The Petitioner filed the petition on September 13, 2019. The relevant two-year period is therefore from September 13, 2017, through September 13, 2019. *See* 8 C.F.R. § 204.5(m)(4).

In a September 2020 letter, the Petitioner's vice president, [redacted], stated that the Beneficiary "has been a member missionary since August 2015 and fulltime staff missionary since September 4, 2017 until present." In another letter, dated October 2020, which the Petitioner submitted in response to the Director's request for evidence (RFE), [redacted] indicated that the Beneficiary's "current position does not receive salary, but [he] has maintained and supported the family with their personal funds and [his] spouse's income." In an earlier letter, dated September 2019, [redacted] explained that the organization's "temporary career missionaries provide self-support for their ministries." The Petitioner has acknowledged that between September 2017 and September 2019, the Beneficiary did not receive compensation for his religious work. On appeal, it similarly does not claim that the Beneficiary received compensation. Instead, the Petitioner argues that the Beneficiary possesses the requisite religious work experience because he self-supported during the relevant two-year period, and thus, the Petitioner alleges that it need not show he received compensation.

The regulation does not support the Petitioner's contention. Specifically, under 8 C.F.R. § 204.5(m)(4), the Petitioner must demonstrate that, during the relevant two-year period, the Beneficiary had worked in one of the positions described in 8 C.F.R. § 204.5(m)(2). The regulation at 8 C.F.R. § 204.5(m)(2) defines a qualifying position as "a full time . . . compensated" work as a minister, in a religious vocation, or a religious occupation. In addition, while under 8 C.F.R. § 204.5(m)(11)(iii), evidence of compensation during the two-year period may include documentation confirming self-support, U.S. Citizenship and Immigration Services (USCIS) has specified that individuals who rely on self-support to establish the compensation element must be "participating in an established, traditionally non-compensated missionary program." *Special Immigrant and Nonimmigrant Religious Workers Final Rule*, 73 Fed. Reg. 72276, 72278, 2008 WL 4997485 (Nov.

26, 2008); *see also* 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).

Here, the record contains inconsistent information that fails to establish that the Petitioner operates an established, traditionally non-compensated missionary program. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (requiring resolution of inconsistencies in the record with independent, objective evidence pointing to where the truth lies). On page 3 of its appellate brief, the Petitioner, through counsel, alleges that "[s]elf-supporting missionaries are a traditional and common type of employment capacity in the mission field, and it is often referred to as 'tent making' within Christian missionary sending agencies." Page 4 of the appellate brief claims that the Petitioner's RFE evidence, including "articles, brochures, online postings, newsletters, and other documents," demonstrates that "the [Petitioner] has an established program for its uncompensated missionary work." However, in his October 2020 letter, [redacted] stated that the Petitioner "has always had the services of paid missionaries." While noting that the Petitioner has "had non-salaried and self-supporting missionaries, staff and volunteers," [redacted] explained that "[m]ost of our missionaries are salaried on the payroll." These statements, as well as submitted materials, are insufficient to confirm that the Petitioner has "an established, traditionally non-compensated missionary program."

Regardless, the regulation at 8 C.F.R. § 214.2(r)(11)(ii)(B)(*1*) states that "[a]n established program for temporary, uncompensated work" is a missionary program "in which . . . [f]oreign workers, whether compensated or uncompensated, have previously participated in R-1 status." On page 9 of the petition, the Petitioner attested that during the five-year period between 2014 and 2019, it did not employ any individuals who were in nonimmigrant R-1 status or submit nonimmigrant R-1 petitions for any individuals. This information does not support a finding that the Petitioner has a missionary program "in which . . . [f]oreign workers . . . have previously participated in R-1 status." 8 C.F.R. § 214.2(r)(11)(ii)(B)(*1*). The evidence in the record does not support a finding that between September 2017 and September 2019, the relevant two-year period, the Beneficiary was participating in an established, traditionally non-compensated missionary program. *See* 73 Fed. Reg. at 72278; *see also* 8 C.F.R. § 214.2(r)(11)(ii)(B)(*1*). Accordingly, the evidence in the record, including documentation concerning the Beneficiary's self-support, does not confirm that he possesses the requisite prior religious work experience required under 8 C.F.R. § 204.5(m)(4). *See also* 8 C.F.R. § 204.5(m)(2).

III. CONCLUSION

The Petitioner has not established, by a preponderance of the evidence, its eligibility to classify the Beneficiary as a special immigrant religious worker. Specifically, it has not demonstrated that the Beneficiary possesses the requisite two-year qualifying religious work experience. 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.