U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19993095

Date: MAY 2, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner, a religious organization, seeks to classify the Beneficiary as a special immigrant religious worker to perform services as a pastor. *See* Immigration and Nationality Act (the Act or INA) 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 Beneficiary did not possess the requisite two-year qualifying religious work experience, and that the Petitioner did not submit verifiable evidence of how it intended to compensate the Beneficiary. *See* 8 C.F.R. § 204.5(m)(2), (4), (10) (2019). We dismissed the appeal.[1]

The matter is now before us on a motion to reopen the proceeding. On appeal, the Petitioner maintains that it has established the Beneficiary's requisite two-year qualifying religious work experience, as well as submitted the required verifiable evidence concerning compensation. In addition, the Petitioner appears to claim that its former counsel was responsible for its failure to demonstrate eligible to classify the Beneficiary as a special immigrant religious worker.

Upon review, we will dismiss the Petitioner's motion to reopen the proceeding.

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. *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)(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

[1] Our most recent decision in this matter was *In Re: 11933085* (AAO May 13, 2020).

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.

The regulation at 8 C.F.R. § 204.5(m)(4) further specifies:

> A break in the continuity of the work during the preceding two years will not affect eligibility so long as:
>
> (i) The alien was still employed as a religious worker;
>
> (ii) The break did not exceed two years; and
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> (iii) The nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

In addition, the regulation specifies the required evidence relating to a beneficiary's prior employment, stating:

> 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:
>
> (i) Received salaried compensation, the petitioner must submit IRS [Internal Revenue Service] 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.
>
> . . . .
>
> If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

8 C.F.R. § 204.5(m)(11).

As relating to motions, the regulation at 8 C.F.R. § 103.5(a)(2) provides that "[a] motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

On motion, the Petitioner appears to place blame on its former counsel for the Director's denial of the petition as well as for our dismissal of its subsequent appeal. The Petitioner, however, has not specifically advanced an ineffective assistance of counsel claim. Regardless, it has not submitted the required documentation specified in *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F. 2d 10 (1st Cir. 1988). As such, we will not consider whether the Petitioner's former counsel was ineffective in his representation before the Petitioner filed the instant motion. Instead, we will review the documents the Petitioner offers on motion and decide if it has met the motion to reopen requirements under 8 C.F.R. § 103.5(a)(2).

Upon review, we will dismiss the Petitioner's motion to reopen the proceeding because it has not "state[d] the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." 8 C.F.R. § 103.5(a)(2). As discussed in our previous decision, the Petitioner must show that the Beneficiary worked full-time, and received compensation, as a religious worker during the two-year period before the Petitioner filed the petition, which is a period from March 2017 through March 2019. *See* 8 C.F.R. § 204.5(m)(4); *see also* 8 C.F.R. § 204.5(m)(2). The Beneficiary worked for his former employer, [redacted] Baptist Church, in 2017 and 2018, but his employment was terminated in November 2018. According to a November 2019 letter from the president of the [redacted] Baptist Association of USA and Canada, "[o]n November 18th, 2018, the [redacted] Baptist Church decided . . . to dismiss [the Beneficiary]." This letter confirmed that [redacted] Baptist Church terminated the Beneficiary's employment in November 2018. Based on this evidence, we concluded that the Petitioner failed to show that the Beneficiary worked full-time, and received compensation, as a religious worker from November 2018 (when [redacted] Baptist Church terminated the Beneficiary's employment) through March 2019 (the end of the relevant two-year period).

The evidence the Petitioner presents on motion, including statements from a member of [redacted] Baptist Church as well as from the Beneficiary, confirms that the Beneficiary stopped working for his former employer in November 2018. These statements that the Petitioner offers on motion thus do not demonstrate that the Beneficiary possessed the requisite two-year qualifying religious work experience, from March 2017 through March 2019. *See* 8 C.F.R. § 204.5(m)(4); *see also* 8 C.F.R. § 204.5(m)(2).

On motion, the Petitioner claims that the Beneficiary "has worked in our church since 2016 as well as he was enrolled in a PHD program at [redacted] University majoring in theology during the November 2018 – March 2019 [period]." In a statement the Petitioner offers on motion, the Beneficiary claims that after his November 2018 termination from [redacted] Baptist Church, he "continued to be a fulltime minister of [the petitioning entity] and that church provided stipends for [him] to cover [his] living expenses." The Petitioner also submits an attestation

from the rector of [redacted] University, stating that the Beneficiary had been a student at the university's distance program since 2015, and that he completed his theological studies in September 2019.

We considered both issues in our previous decision, concluding that the Petitioner did not show that it employed or compensated the Beneficiary between November 2018 and March 2019, and that the Beneficiary's studies did not qualify as an acceptable break in the continuity of work, specified under 8 C.F.R. § 204.5(m)(4). As noted in our previous decision, the Petitioner's "Church Leadership Board" alleged in a March 2019 letter that the Beneficiary had been "working as a volunteer [for the petitioning entity] since October 2016." On motion, the Petitioner fails to offer documents confirming that it compensated the Beneficiary for his volunteering work between November 2018 and March 2019 or that it hired the Beneficiary as an employee during that period. The December 2018 document that the Petitioner offers on motion and that it categorizes as its budget concerns its anticipated income and expenses for 2019. It does not, however, confirm that it hired the Beneficiary as an employee or compensated him for his religious work between November 2018 and March 2019. The Petitioner may not rely on the Beneficiary's volunteered work to satisfy the two-year religious work experience requirements. *See* 8 C.F.R. § 204.5(m)(4); *see also* 8 C.F.R. § 204.5(m)(2).

Furthermore, as explained in our previous decision, the Petitioner has not shown through evidence that during the period between November 2018 and March 2019 the Beneficiary was "still employed as a religious worker." *See* 8 C.F.R. § 204.5(m)(4)(i). As such, the Petitioner has not established that the Beneficiary's break in his religious work is acceptable under 8 C.F.R. § 204.5(m)(4) or that the break does not affect his eligibility for the special immigrant religious worker status.

Based on these reasons, the record does not support a finding that between March 2017 and March 2019, the Beneficiary worked continuously at a compensated position as a qualifying religious worker. The Petitioner thus has not satisfied the two-year religious work experience requirements. *See* 8 C.F.R. § 204.5(m)(4); *see also* 8 C.F.R. § 204.5(m)(2).[2]

III. CONCLUSION

We will dismiss the Petitioner's motion to reopen the proceeding because its filing does not state new facts to be provided in the reopened proceeding or be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

ORDER: The motion to open is dismissed.

[2] We need not consider whether, on motion, the Petitioner has submitted verifiable evidence of how it intended to compensate the Beneficiary. *See* 8 C.F.R. § 204.5(m)(10). As the Petitioner has not established that the Beneficiary possessed the required two-year religious work experience, it has not demonstrated eligibility to classify him as a special immigrant religious worker.