



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 24060591

Date: FEB. 9, 2023

Appeal of California Service Center Decision

Form I-360, Petition for Special Immigrant Religious Worker

The Petitioner, a religious organization, seeks to classify the Beneficiary¹ as a special immigrant religious worker to perform services as a pastor. *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 Petitioner did not satisfactorily complete a site inspection. On appeal, the Petitioner asserts that the Director had sufficient documentation to resolve inconsistencies raised in the site visit but applied a higher standard of proof than preponderance of the evidence in making the decision.

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 remand the matter for entry of a new decision consistent with the following analysis.

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. Foreign nationals may self-petition for this classification. *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 Because Part 1 of the Form I-360 petition identifies the Beneficiary as the Petitioner and Part 11 shows the Beneficiary's signature on the Petitioner's Signature block, the Beneficiary has a standing to file this appeal as a self-petitioner pursuant to 8 C.F.R. § 103.3(a)(1)(iii).

The regulation at 8 C.F.R. § 204.5(m)(2) states that one of eligibilities for classification as a special immigrant religious worker includes working in a full time (at least 35 hours per week) compensated position as a minister of a religious denomination, or in a qualifying religious vocation or occupation. The regulation at 8 C.F.R. § 204.5(m)(4) further requires that the special immigrant religious worker must have been working, either abroad or in the United States ² for at least the two-year period immediately preceding the filing of the petition.

The regulation at 8 C.F.R. § 204.5(m)(11) addresses the evidentiary requirements to establish prior religious work experience and provides that qualifying prior experience can be shown by submitting IRS documentation of salaried compensation or non-salaried compensation.

The regulation at 8 C.F.R. § 204.5(m)(12) discusses inspections, evaluations, verifications and compliance reviews of religious worker petitions and states:

The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee.

II. ANALYSIS

In March 2022, USCIS conducted a telephonic site inspection with [redacted] who signed the religious denomination certification page of the petition. The signatory revealed that the Beneficiary no longer works at [redacted] North Carolina, as shown on the petition, but moved five months ago to plant a new church at [redacted] North Carolina. In May 2022, the Director issued a notice of intent to deny (NOID) questioning whether the Petitioner actually performed religious activities at the old address and continues to carry out its business at the new location. In its NOID response, the Petitioner submitted documents confirming its move to the new location and current religious activities, including copies of old and new lease agreements, a lease addendum, church flyer, utility bill, and other relevant affidavits.

The Director denied the petition for not satisfactorily completing the site inspection and noted the following inconsistencies: the building in Raleigh had no signage of the petitioning organization; there was a gap of eight months between the old lease agreement and the new lease agreement; and a search of business records for the new address found an automotive radiator and A/C company instead of a church. The Director also determined that the Petitioner did not provide sufficient evidence regarding the church planting or relocation.

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 USCIS Policy Memorandum PM-602-0119 *Qualifying U.S. Work Experience for Special Immigrant Religious Workers* 2 (July 5, 2015), http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2015/2015-0705_Lawful_Status_PM_Effective.pdf (USCIS Policy Memorandum PM-602-0119).

On appeal, the Petitioner asserts that the Director erroneously applied a heightened standard of proof in reviewing the evidence and submits new evidence to further explain the inconsistencies raised in the decision.

The Petitioner provides copies of checks and Zelle payment records showing a month-to-month lease from February 2021 to September 2021 to explain the gap between the old and new lease agreement. These rent payment records are validated by other documents already on record, such as the lease agreement addendum showing the lease term from February 16, 2020 to February 15, 2021; a letter from the church administrator of the [redacted] Ministries confirming the sublease arrangement from February 2021 to September 2021; and the attestation letter from [redacted] [redacted] verifying that the petitioning organization moved to a new address in [redacted] North Carolina, due to the growth of the congregation.

The Petitioner also submits a list containing names and phone numbers of church members who attended services at the building in Raleigh, to prove its religious activities prior to the move. The Petitioner further demonstrates continuing religious activities at the new location with photographs of signage on the building. The Petitioner asserts that the building at the new location has both suites A and B, and that the organization's street address is [redacted]

As the Director did not have an opportunity to consider these new materials, we remand the matter to the Director for additional analysis and a new determination by a preponderance of evidence standard. Here, the Director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of evidence. *Matter of Chawathe*, 25 I&N Dec. at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). Even if the Director has some doubt as to the truth, the Director should evaluate whether the Petitioner's claim is 'more likely than not' or 'probably true.' *Matter of Chawathe*, 25 I&N Dec. at 375-76. See also *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place).

In addition, we remand the matter so that the Director can determine whether the Beneficiary possesses the requisite two-year qualifying religious work experience. 8 C.F.R. § 204.5(m)(2), (4). Since the petition was filed on April 7, 2021, the Petitioner must demonstrate that the Beneficiary was working as a minister or in religious vocation or occupation in a full-time, compensated position from April 7, 2019, to April 7, 2021. The Petitioner states on appeal that the Beneficiary started the petitioning organization on September 20, 2019. The organization's articles of incorporation (dated August 21, 2019) and IRS tax exempt status document (dated September 23, 2019) on record support this statement. Given that the organization was not in existence for six months of the two-year period, the record contains inconsistent documentation related to the Beneficiary's religious duties, work location, and corresponding work hours during this period. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The record further shows that [redacted] executed a notarized affidavit on April 1, 2021, stating that the Beneficiary "has been pastoring [redacted] North Carolina since October 2018." This statement conflicts with other evidence in the record, which shows that the petitioning organization was not formed until September 2019. The Petitioner must explain this discrepancy in the record with independent, objective evidence pointing to where the truth lies. *Id.*

Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted.³

III. CONCLUSION

As the Director has not had an opportunity to consider the Petitioner's evidence on appeal and did not consider whether the Petitioner sufficiently demonstrated that the Beneficiary has the requisite two years of religious work experience under 8 C.F.R. § 204.5(m)(2), (4), we will remand the matter for the Director's consideration and entry of a new decision.⁴

Upon remand, the Director should consider whether an on-site inspection of the petitioning organization at its current location is warranted. The Director should also examine whether the Beneficiary performed religious work in a full time, compensated position from April 7, 2019, to September 20, 2019. The Director may request the Beneficiary's specific work location, title, and duties, or evidence related to any other eligibility requirement during this period.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

³ We also note here that the Petitioner on appeal makes a statement that calls into question whether the Beneficiary properly maintained her nonimmigrant status. The Petitioner states: "[Beneficiary] traveled to the United States on April 18, 2017 with a valid R-1 visa. She has worked continuously as a religious worker." However, the Beneficiary's I-797A approval notice and B-2 stamp on her passport reveal that the Beneficiary initially entered the United States with a tourist visa on April 18, 2017, and then changed to R-1 status on December 11, 2018. Therefore, from April 18, 2017 to December 11, 2018, the Beneficiary was in B-2 status and was not allowed to work as a religious worker.

⁴ The Petitioner also requests we waive the Beneficiary's unlawful presence. Such a request falls outside the scope of our appellate review of this petition. We make no determination on the request for waiver of inadmissibility.