



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

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

In Re: 23136074

Date: JAN. 25, 2023

Appeal of California Service Center Decision

Form I-360, Petition for Special Immigrant Religious Worker

The Petitioner, a church, seeks to classify the Beneficiary 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 based on the negative site visit report without issuing an RFE or NOID. On appeal, the Petitioner asserts that the Director misinterpreted the facts gathered in the site visit and acted unreasonably in denying the petition without providing an opportunity for the Petitioner to explain the deficiencies.

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 withdraw the Director's decision, and remand for the 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. *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)(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 in the vocation of a minister of a religious denomination. 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 ¹ 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.

Finally, 8 C.F.R. § 103.2(b)(16)(i) provides that, “[i]f the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered.”

II. ANALYSIS

The regulation at 8 C.F.R. § 103.2(b)(16)(i) requires the Director to provide the Petitioner with sufficient notice of the derogatory information underlying the decision to allow an opportunity for rebuttal. *See also Matter of Obaigbena*, 19 I&N Dec. 533, 536. The Director denied the petition solely based on the negative site visit report that included extensive findings and factual allegations unknown to the Petitioner. Since the Director did not issue an RFE or NOID before the denial, the Petitioner was not afforded the opportunity to respond and explain the adverse information found in the site visit report. Therefore, we will withdraw the Director's decision on the matter.

Notwithstanding the Director's failure in providing a reasonable opportunity for rebuttal, the Petitioner has not sufficiently demonstrated that the Beneficiary has the requisite two years of religious work experience in a full time, compensated position immediately preceding the filing of the petition. *See* 8 C.F.R. § 204.5(m)(2), (4).

¹ 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).

In this case, the petition was filed on June 9, 2020. Therefore, the Petitioner must demonstrate that the Beneficiary was working as a minister or in qualifying religious vocation or occupation in a full-time, compensated position from June 9, 2018, through June 9, 2020. Yet the record does not contain verifiable evidence of W-2s or other IRS documentation to show that the Beneficiary worked and received compensation during the requisite period. The Form I-360, part 9, line 6E requests description of the proposed salaried and/or non-salaried compensation for the Beneficiary. The Petitioner states here that the Beneficiary will receive “monetary remuneration (salary) coupled with food and housing allowances” but does not provide detailed information on the type and amount of salary. The Petitioner submitted the 2020 income statement for the church that shows the pastoral expenses are \$62,000, but the evidence does not contain W-2s, tax returns or other IRS documentation showing how much the Beneficiary was paid by the church from June 9, 2018, to June 9, 2020. In addition, the Petitioner submitted the office lease showing that the Petitioner rents the property on [redacted] from the [redacted] Fellowship. However, this lease contract only demonstrates the Petitioner rents the building for church activities and does not establish that the Petitioner provided housing to the Beneficiary.

We also note that the Beneficiary obtained R-1 status on December 3, 2018, and therefore he would have been in F-1 student status from June 9, 2018, to December 3, 2018, which falls during the qualifying two years of experience. The record does not contain verifiable documents establishing that this period in F-1 status constitutes a full time, compensated religious work. We therefore remand the matter to the Director for a closer examination of the record and entry of a new decision.

III. CONCLUSION

For the reasons discussed above, we will remand the matter for the Director to examine the Petitioner’s evidentiary documents submitted on appeal and provide the Petitioner an opportunity to respond to any derogatory information found in the site visit report. If necessary, the Director may request additional evidence pertinent to the new determination, including the specific locations and times the religious activities are held, as well as the days and times during which the Beneficiary is present at the church, or evidence related to any other eligibility requirement.

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