



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

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

In Re: 25937167

Date: MAY 5, 2023

Appeal of California Service Center Decision

Form I-360, Petition for Special Immigrant Religious Worker

The Petitioner, a Baptist church, seeks to classify the Beneficiary as a special immigrant religious worker to perform services as a pastor and music minister. *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 record did not establish eligibility for a special immigrant religious worker. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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 dismiss the appeal.

I. LAW

Non-profit religious organizations may petition for foreign nationals to immigrate to the United States to perform full-time, compensated religious work as ministers, in religious vocations, or in other religious occupations. The petitioning organizations 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) of the Act).

Specifically, the foreign national must have been working continuously in a full time (at least 35 hours per week), compensated status in one of the three types of qualifying positions, either in the United

States or abroad,¹ for at least the two-year period immediately preceding the filing of the petition. 8 C.F.R. § 204.5(m)(2), (4). Evidence of that previous employment must include IRS documentation of salaried or non-salaried compensation if employed in the United States, and comparable evidence if employed outside the United States during this two-year period. If the foreign national received no salary but provided for their own support, the petitioner must show how support was maintained through verifiable evidence. 8 C.F.R. § 204.5(m)(11).

When a petitioner seeks classification for a minister under this classification, it must show that the position requires an individual who is fully trained and authorized by the denomination to conduct religious worship and other duties performed by members of the clergy, is not a lay preacher, will perform activities related to their religious calling, and will work solely as a minister. In addition, a petitioner must submit evidence of the individual's qualification as a minister, including an ordination certificate or other evidence reflecting acceptance of their qualification as a minister, and evidence of their completion of any prescribed theological education required or recognized by the religious denomination. 8 C.F.R. § 204.5(m)(5), (9).

A petitioner must also submit verifiable evidence of how it intends to compensate the foreign national, whether through salaried or non-salaried compensation. Such evidence may include evidence of previous compensation for similar positions, budgets showing money set aside for salaries, or other evidence acceptable to USCIS. If IRS documentation is available it must be provided, and if not an explanation of its absence must be submitted along with comparable, verifiable evidence. 8 C.F.R. § 204.5(m)(10).

In addition, 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

The Director denied the petition on October 25, 2022, as the Petitioner did not provide the requested documents in response to the notice of intent to deny (NOID) issued on January 10, 2022. The Director concluded that the Petitioner did not submit verifiable documentation showing that it intends to compensate the Beneficiary \$25,000 per year as stated on the petition and the Beneficiary has the two

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).

years of qualifying work experience, from July 17, 2017, to July 16, 2019. The Director also found that the Petitioner failed to satisfactorily complete the compliance inspection as it did not respond to the additional requests made by the immigration officer who conducted a site visit at the Petitioner's church on May 3, 2019.

On appeal, the Petitioner states that it sent the evidence requested by the Director's NOID via USPS registered mail and submits a USPS delivery confirmation page showing that this mail arrived to USCIS on February 16, 2022. The Petitioner claims that its NOID response and accompanying evidence in this mail "was intended to clarify questions that were raised in [the] Notice to Deny" and includes "all the material sent in that mailing" on appeal. As the Petitioner submits proof that it timely responded to the Director's NOID,² we will consider the evidence on appeal.

We will first evaluate the evidence of the Petitioner's ability to compensate the Beneficiary. The Petitioner submits a one-page account balance sheet showing available funds of \$1,365,131.59 as of February 12, 2022. However, the Petitioner does not provide copies of actual bank statements, audited financial statements, or any detailed account of money is set aside for wages of the Beneficiary or other employees within the church pursuant to 8 C.F.R. § 204.5(m)(10). The initial evidence on record also does not include documents related to future compensation.

Although the Petitioner submits its counsel's letter dated February 7, 2022, stating that "the Petitioner has enclosed tax return copies and [s]tatements proving the financial ability to compensate the beneficiary the proposed salary of \$25,000 per year," the evidence on appeal does not contain such documents except for the aforementioned account balance sheet. Assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence.

We will then assess the evidence demonstrating that the Beneficiary has the two years of full-time, compensated religious work experience from July 17, 2017, to July 16, 2019. The record includes two letters from the senior pastor written in April 2019, describing the Beneficiary's compensation package; the Beneficiary's IRS Forms 1099-MISC, Miscellaneous Income, from 2015, 2018, and 2019; a copy of an expired lease agreement; and another letter from the senior pastor dated October 1, 2013, explaining the housing arrangement to the Beneficiary.

The senior pastor's letters from April 2019 break down the Beneficiary's total compensation into \$15,000 in rent and utilities, \$2,200 in travel and hospitality, and \$8,800 in cash compensation, totaling \$26,000 a year. While the Forms 1099 prove that the Beneficiary received a portion of the compensation package (\$6,000 in 2018 and \$7,800 in 2019), the Petitioner does not provide verifiable evidence of the remaining compensation provided to the Beneficiary for rent and utilities or for travel and hospitality.³

² The Petitioner's NOID response letter dated February 11, 2022, identifies the petition with an incorrect receipt number. The I-360 petition at issue has a receipt number of [REDACTED] but the Petitioner's NOID response letter refers to [REDACTED] which is the previously filed and approved I-129 petition for the same beneficiary.

³ The senior pastor states in his April 2019 letter that such payments were purportedly "made through accounts other than payroll" without any other explanation.

Although the Petitioner maintains that the church provided housing to the Beneficiary, it submits an expired lease, valid only from April 17, 2018, to April 30, 2020, and does not demonstrate that housing was provided to the Beneficiary for the entire period of the qualifying two years. The Petitioner also does not provide the Beneficiary's Form 1099 from 2017 even though it falls during the qualifying two years of religious work experience.

With the appeal, we note that the Petitioner has submitted documentation related to the Beneficiary's work schedule that conflicts with previously submitted evidence. 8 C.F.R. § 204.5(m)(2) requires the Beneficiary to work at least 35 hours per week. The schedule submitted with the initial petition indicated the Beneficiary worked 35 hours per week. On appeal, the Petitioner has provided a different schedule showing that the Beneficiary does not work on Mondays and Fridays and works less than 35 hours total each week. The Petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, because the Petitioner has submitted inconsistent documentation of the Beneficiary's work schedule, the record does not establish that the Beneficiary will work in a full-time, compensated position.

For the reasons discussed above, the Petitioner has not provided sufficient, verifiable evidence to demonstrate that the Beneficiary possesses the required two years of full-time, compensated work experience and how it intends to compensate the Beneficiary according to 8 C.F.R. § 204.5(m)(4) and (10).

In addition, we find the record lacks sufficient documentation supporting the Beneficiary's qualification as a minister. The Petitioner initially submitted a certificate dated October 10, 2011, showing that the Beneficiary was ordained as "Titular Pastor" by [redacted] at the [redacted] church. Although [redacted] letter states that the Beneficiary "frequented" the "Baptist Biblical School located at [redacted]"⁴ the record does not contain transcripts or diploma from a seminary or other theological institutions. The Petitioner included some training certificates in "global leadership," "digital sound engineering," and advanced piano lessons, but they do not indicate that he completed any prescribed theological education required or recognized by the religious denomination pursuant to 8 C.F.R. § 204.5(m)(9).

As the Petitioner has not established eligibility for the benefit, we decline to reach any conclusion on the Petitioner's satisfactory completion of a compliance inspection pursuant to 8 C.F.R. § 204.5(m)(12) as it would not change the outcome of the appeal.⁵ See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n. 7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

⁴ [redacted] is a town in [redacted] West Africa.

⁵ During the site visit in 2019, the immigration officer requested additional evidence of the Beneficiary's compensation during the qualifying two years and the Petitioner's ability to pay. The record does not demonstrate that the Petitioner responded to these requests. The officer also specifically inquired about the training course that the Beneficiary intended to take using his tourist visa in 2013. We note that the record includes a training certificate of "Global Leadership Training Center" dated March 30, 2013, but the Petitioner has not indicated that the purpose of his tourist visa was for this particular training.

III. CONCLUSION

The Petitioner has not established, by a preponderance of the evidence, its eligibility to classify the Beneficiary as an immigrant religious worker. It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Here, that burden has not been met.

ORDER: The appeal is dismissed.