U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29618976

Date: SEP. 07, 2023

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Amerasian, Widow(er), or 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 senior pastor. This fourth preference 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. Immigration and Nationality Act (the Act) section 203(b)(4), 8 U.S.C. § 1153(b)(4).

The Director of the California Service Center denied the petition, concluding that the Petitioner did not establish that the Beneficiary possesses the required two years of qualifying experience as a religious worker. We dismissed a subsequent appeal, concluding that the Petitioner failed to show the Beneficiary's qualifying experience as a religious worker and that he is qualified for the proposed employment. We also dismissed the Petitioner's first combined motions to reopen and reconsider without reaching the issue of the Beneficiary's qualifications. The matter is now before us on combined motions to reopen and reconsider for the second time.

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). Upon review, we will dismiss both motions.

I. LAW

Non-profit religious organizations may petition for foreign nationals, or a foreign national may petition on their own behalf, to immigrate to the United States to perform full-time, compensated religious work as ministers, in religious vocations, or in religious occupations. The foreign national must meet 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) of the Act, 8 U.S.C. § 1101(a)(27)(C).

Specifically, the foreign national must have been working continuously in a full time, compensated status in one of the three types of qualifying positions, either in the United States or abroad, for at least the two-year period immediately preceding the filing of the petition. A break in the continuity of this

work will not affect eligibility if the foreign national was still employed as a religious worker, the break did not exceed two years, and the break was for further religious training or a sabbatical. 8 C.F.R. §§ 204.5(m)(2),(4).

If the foreign national gained this previous work experience in the United States, the evidence of their work experience must show that they received salaried compensation, non-salaried compensation, or provided for their own support and that of any dependents. On the other hand, employment outside the United States during this two-year period must be documented by comparable evidence. 8 C.F.R. § 204.5(m)(11).

II. ANALYSIS

A. Motion to Reopen

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

When reviewing motions to reopen, we do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, we interpret "new facts" to mean those that are material to the issues to the issues raised on motion and that have not been previously submitted in the proceeding. Reasserting previously stated facts or resubmitting previously submitted evidence does not constitute "new facts."

In our most recent decision, we noted that despite the Petitioner's claims to have issued more than 100 checks to the Beneficiary in 2017 and 2018, the record did not include copies of these cancelled checks. In addition, we concluded that the Beneficiary's bank statements did not corroborate his receipt of most or all of these checks, and pointed out that several of the checks listed in the "Transaction Detail by Account" documents were listed more than once, creating doubt as to the accuracy and authenticity of these documents. Finally, we noted the lack of tax documentation for the years 2017 and 2018 to meet the requirement at 8 C.F.R. § 204.5(m)(11)(i). We therefore concluded that the Petitioner had not established that the Beneficiary was employed in a full-time, compensated position as a religious worker in the two-year period immediately prior to the filing of its petition, which in this case is from March 2017 to March 2019.[1]

With its motion, the Petitioner now submits for the first time copies of the checks written to the Beneficiary, as well as the Beneficiary's Form 1040 income tax returns for the years 2017 and 2018. The Petitioner asserts that these new facts establish eligibility, as they show that the Beneficiary was compensated from March 2017 through March 2019, the qualifying two-year period in this case.

[1] We acknowledged that the Beneficiary's tax returns and Form 1099 for 2019, previously submitted on appeal, were sufficient to establish his employment in a full-time, compensated capacity as a religious worker for the first three months of that year.

The Director specifically sought the Beneficiary's tax documentation, which is required evidence, in his request for evidence (RFE) of August 26, 2019, allowing the Petitioner the maximum time period to respond. The regulation governing RFEs at 8 C.F.R. § 103.2(b)(11) requires that all requested evidence be submitted together at the same time, and since the requested tax documentation related to prior tax years, it should have been available to the Petitioner. Where, as here, a Petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal or motion. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). We will therefore not consider the copies of the Beneficiary's 2017 and 2018 Form 1040s.

In addition, even if we were to consider this evidence, we note that the copies of both the 2017 and 2018 Forms 1040 were dated by the preparer on June 1, 2022, several years after they were due. Like a delayed birth certificate, the tax returns signed years after they were due to be filed with the Internal Revenue Service (IRS) raise serious questions regarding the truth of the facts asserted. *Cf. Matter of Bueno-Almonte,* 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma,* 20 I&N Dec. 394 (BIA 1991) (discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings). This is especially true in this case, as the copies of the tax returns are not accompanied by Forms 1099 or W-2 verifying the source of the Beneficiary's income, nor do they demonstrate that they were filed and received by the IRS. Further, neither the Petitioner nor the Beneficiary has provided an explanation for the late preparation of these income tax returns. Therefore, for all of these reasons, we conclude that this evidence does not demonstrate that the Beneficiary was employed in a full-time, compensated religious worker position during the relevant period.

Regarding the copies of checks issued by the Petitioner to the Beneficiary in 2017 and 2018, our previous decision cited the lack of such evidence as one reason that it had not shown the Beneficiary's qualifying experience in the two years immediately preceding the filing of the petition. However, we note that most of these checks do not include any or sufficient information on their back side indicating that they were deposited by the Beneficiary. Considering our previous observation that the Beneficiary's bank statements do not reflect the deposit of most, if not all, of the checks listed on the "Transaction Detail by Account" documents, this evidence is insufficient to overcome our conclusion regarding the Beneficiary's experience requirement under 8 C.F.R. §§ 204.5(m)(4) and (11).[2]

Turning to other evidence submitted with the motion, neither of the letters present new facts that are material to the issues raised on motion. [redacted] letter is nearly identical to previous letters he has submitted, and [redacted] provides a brief background information about the Petitioner and expresses his support for the Beneficiary's petition. In addition, the Beneficiary's income tax returns for 2019 were previously submitted. Accordingly, none of this evidence meets the requirements of a motion to reopen.

Similarly, the evidence regarding the Beneficiary's qualifications as a minister were also previously submitted, and also does not meet the requirements of a motion to reopen. As we stated in our previous decision, because the Petitioner has not established that the Beneficiary has the required full-time,

[2] The evidence does address our previous concern about duplicate check numbers on the "Transaction Detail by Account" documents.

compensated experience as a religious worker, and this issue is dispositive of the Petitioner's motion, we need not reach the issue of his qualification as a minister. Because the Petitioner cannot establish eligibility for the requested classification, we reserve this issue.[3]

B. Motion to Reconsider

A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

The scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). The Petitioner's contentions in their current motion merely reargue facts and issues we have already considered in our previous decisions. *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision"). We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

III. CONCLUSION

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motions will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[3] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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).