U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19288341

Date: MAY 26, 2022

Appeal of California Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (Religious Worker – R-1)

The Petitioner, a religious organization, seeks to classify the Beneficiary as an R-1 nonimmigrant religious worker to perform services as an "early childhood teacher." *See* Immigration and Nationality Act (the Act) Section 101(a)(15)(R), 8 U.S.C. § 1101(a)(15)(R). This nonimmigrant R-1 classification allows non-profit religious organizations, or their affiliates, to temporarily employ foreign nationals as ministers, in religious vocations, or in religious occupations in the United States.

The Director of the California Service Center denied the petition, concluding that the Petitioner did not submit verifiable evidence explaining how it would compensate the Beneficiary. *See* 8 C.F.R. § 214.2(r)(11) (2020). Specifically, the Director noted that the Petitioner had indicated in an earlier petition that the Beneficiary would receive $65,000 a year in wages, but the evidence in the record failed to confirm that it paid this amount to the Beneficiary. As relating to the instant petition, the Director observed that the Petitioner again alleged that it would pay the Beneficiary $65,000 per year in wages. The Director determined that the Petitioner did "not establish[] [it was] able to compensate the [B]eneficiary the salary stated in the petition."

The Petitioner appeals, maintaining that it has shown eligibility to classify the Beneficiary as an R-1 nonimmigrant religious worker. In these proceedings, it is the Petitioner's burden to establish, by a preponderance of the evidence, eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012); *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).[1] Upon *de novo* review, we will dismiss the appeal.

I. LAW

Non-profit religious organizations may petition for foreign nationals to work in the United States for up to five years to perform religious work as ministers, in religious vocations, or in religious occupations. The petitioning organization must establish, among other requirements, that the foreign national beneficiary has been a member of a religious denomination for at least the two-year period

[1] If a petitioner submits relevant, probative, and credible evidence that leads us to believe that the claim is "more likely than not" or "probably" true, it has satisfied the preponderance of the evidence standard. *Chawathe*, 25 I&N Dec. at 375-76.

before the date the petition is filed. *See generally* Section 101(a)(15)(R) of the Act; 8 C.F.R. § 214.2(r).

In addition, the regulation at 8 C.F.R. § 214.2(r)(11) provides, in pertinent part:

> *Evidence relating to compensation.* Initial evidence must state how the petitioner intends to compensate the alien, including specific monetary or in-kind compensation, or whether the alien intends to be self-supporting. In either case, the petitioner must submit verifiable evidence explaining how the petitioner will compensate the alien or how the alien will be self-supporting. Compensation may include:
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> (i) *Salaried or non-salaried compensation.* Evidence of compensation may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS [U.S. Citizenship and Immigration Services]. IRS [Internal Revenue Service] documentation, such as IRS Form W-2 [Wage and Tax Statement] or certified tax returns, must be submitted, if available. If IRS documentation is unavailable, the petitioner must submit an explanation for the absence of IRS documentation, along with comparable, verifiable documentation.
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> (ii) *Self support* . . . .

II. ANALYSIS

The Petitioner has not shown eligibility to classify the Beneficiary as an R-1 nonimmigrant religious worker, because it has not submitted verifiable evidence explaining how it intends to compensate the Beneficiary. *See* 8 C.F.R. § 214.2(r)(11)(i). Pages 4 and 5 of the petition indicate that the Petitioner will pay the Beneficiary $65,000 in wages per year to work fulltime as a teacher in its [redacted] School. As noted in the Director's decision, the Petitioner had previously filed another petition on the Beneficiary's behalf, also claiming that it would pay her $65,000 a year in wages. USCIS approved the earlier petition, noting on the approval notice that the Beneficiary's nonimmigrant R-1 status would be valid between January 2018 through March 2020.

The record includes the Beneficiary's tax documents, but they do not support the Petitioner's claim that it had paid her $65,000 a year in wages. According to her 2019 Form W-2, she received from the Petitioner $28,386.20 in "wages, tips, other compensation." An incomplete copy of her U.S. Individual Income Tax Return, IRS Form 1040, reflects the $28,386 figure on the line "wages, salaries, tips, etc." The Beneficiary's Form W-2 and IRS Form 1040 thus do not support a finding that in 2019, the Petitioner had paid the Beneficiary an annual wage of $65,000 to work as a teacher in its school, as specified in the earlier petition.

While the record also includes a corrected IRS Form 1099-MISC, claiming that the Petitioner also paid the Beneficiary $27,433.39 in "nonemployee compensation" in 2019. This document does not support a finding that the Petitioner had compensated the Beneficiary in a manner consistent with its claim on the petition, i.e., she would be compensated in wages. Additionally, the $27,433.39 figure

does not match the "other income" amount the Beneficiary specified in her IRS Form 1040. Furthermore, as the copy of the Beneficiary's IRS Form 1040 is incomplete, the Petitioner has not sufficiently shown that the Beneficiary's $26,866 "other income" noted on the form came from the Petitioner or was compensation for her work as a teacher at the Petitioner's school. The evidence in the record thus is insufficient to establish that the Petitioner had compensated the Beneficiary pursuant to the employment terms it specified in its earlier petition.

As relating to the instant petition, the Petitioner explains that, similarly to the 2019 compensation, the Beneficiary will likely not receive the $65,000 annual wage compensation specified. The Petitioner states on appeal that "there may be times over the holidays and on summer break where the Beneficiary is not in the classroom teaching and is not receiving compensation." It further states that the Beneficiary "is not teaching 2 months of the year" and thus her actual compensation is lower than the $65,000 specified in the petition. The Petitioner's statements concerning the Beneficiary's compensation, considered with the manner it had previously compensated her, are insufficient to support a finding that it will more likely than not compensate the Beneficiary pursuant to the terms it specified in the instant petition. As such, it has not satisfied the compensation requirement under 8 C.F.R. § 214.2(r)(11)(i).

Moreover, the Petitioner reveals on appeal that during the two months in the summer, as well as during unspecified holidays, the Beneficiary will not be working and will not be receiving compensation. As such, the Petitioner has not demonstrated that the Beneficiary will "[b]e coming to the United States to work at least in a part time position (average of at least 20 hours per week)" during the time she will be off. 8 C.F.R. § 214.2(r)(1)(ii). The Petitioner has not pointed to any legal authority that allows the Beneficiary to be in R-1 nonimmigrant status while not working for an extended period as a religious worker and while not receiving compensation.

III. CONCLUSION

The Petitioner has not established, by a preponderance of the evidence, its eligibility to classify the Beneficiary as an R-1 nonimmigrant religious worker.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act; *Skirball Cultural Ctr.*, 25 I&N Dec. at 806. Here, the Petitioner has not met this burden.

ORDER: The appeal is dismissed.