U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25034005

Date: FEB. 23, 2023

Appeal of California Service Center Decision

Form I-129, Petition for a 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 a "Novice Monk." *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 noncitizens 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 sufficiently establish that the Beneficiary would be coming to the United States to "perform a religious vocation or occupation," as required under 8 C.F.R. § 214.2(r)(1)(iii) (2022). *See also* 8 C.F.R. § 214.2(r)(3) (defining "religious occupation" and "religious vocation").[1] The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner offers a statement and additional supporting evidence.

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 noncitizens 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 noncitizen beneficiary has been a member of a religious denomination for at least the two-year period 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 specifies that the petitioner must establish that the beneficiary is "coming [to the United States to work] solely as a minister or to perform a religious vocation or occupation as

[1] The Petitioner has not argued that the Beneficiary's proposed employment qualifies as a "minister" position, as the term is defined under 8 C.F.R. § 214.2(r)(3).

defined in [8 C.F.R. § 214.2(r)(3)]." 8 C.F.R. § 214.2(r)(1)(iii). The regulation provides the following definition for "religious vocation":

> Religious vocation means a formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia, to a religious way of life. The religious denomination must have a class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion. Examples of vocations include nuns, monks, and religious brothers and sisters.

8 C.F.R. § 214.2(r)(3).

II. ANALYSIS

On appeal, the Petitioner does not challenge the Director's adverse finding that the Beneficiary is not coming to the United States to perform in a religious occupation. We will therefore deem this issue waived. *See, e.g.*, *Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009). Instead, the Petitioner argues on appeal that the Beneficiary's proposed employment – novice monk – meets the regulatory definition of a "religious vocation." The Petitioner claims that "the novice monk's commitment is the same as the monks who either are 'tonsured' or have taken 'the Schema.'" It further asserts that "[t]he novice (and sub-novice) monks take vows of poverty, chastity and obedience" and that "[t]hese vows . . . satisfy the requirement that a formal lifetime commitment has been made." Citing to a document entitled "General Regulations Governing Internal Operations, Article 10, Provisions Regarding Novice Monks," the Petitioner maintains that the requirements to become a novice monk "clearly show vows that are inherently a lifetime commitment that is separate and distinguished from secular members of the faith." The Petitioner contends that "[p]ersons are considered to [be] pursuing a religious vocation once they make a public profession of the vows of poverty, chastity and obedience."

The evidence is insufficient to demonstrate that the proposed position – novice monk – meets the regulatory definition of a religious vocation under 8 C.F.R. § 214.2(r)(3). While the document "General Regulations Governing Internal Operations, Article 10, Provisions Regarding Novice Monks," indicates that a novice monk must "first take monastic vows (the first and foremost vows being those of chastity, poverty, and obedience" and that "[o]nce received, the novice monk will live within the monastery," the document does not specifically state that a novice monk must make a "formal lifetime commitment," as required under 8 C.F.R. § 214.2(r)(3) (defining "religious vocation"). On the other hand, according to the document entitled "General Regulations Governing Internal Operations, Article 11, Provisions Regarding Monks," unlike the provisions regarding novice monks, the "position of Monk requires a lifelong commitment, which will be in the form of a ceremony in which the Monk will subscribe to special monastic vows." The "General Regulations Governing Internal Operations" have separate provisions for novice monks and monks, and specify that monks make a "lifelong commitment," a requirement that does not appear under the provisions concerning novice monks.

Other documents in the record similarly do not supporting a finding that a novice monk has taken a "formal lifetime commitment." For example, the abbot of the petitioning entity explained in a July 2022 letter that the vows that novice monks "take are informal" and "not absolutely binding," because they "may freely leave the monastery – and the monastic life, in general – at any time they choose."

(Underline in original.) When describing "other Rassaphore monastics," who are individuals in "first monastic stage, with tonsure," the abbot noted that unlike novice monks, they are individuals who "have taken vows, through Tonsure, with a lifelong commitment, which are spiritually binding."

Additionally, according to a document entitled "Monastic Ranks," which the Petitioner submitted to the Director in response to the request for evidence (RFE), there "are three monastic ranks: the Rassaphore, the Stavrophore, and the Schema-Monk (or Schema-Nun)." While the document also discusses "novice," it does not indicate that "novice" falls under a monastic rank. Instead, it explains that "[i]f the novice continues on to become a monk, he is clothed in the first degree of monasticism at a service at which he receives the tonsure." This document does not support a finding that a "novice" qualifies as a monk who has made a formal lifetime commitment to a religious way of life. Based on these reasons, the record does not demonstrate that the Beneficiary's proposed employment qualifies as work in a religious vocation, because the evidence is insufficient to establish that novice monks have made "a formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia, to a religious way of life." 8 C.F.R. § 214.2(r)(3) (defining "religious vocation").

On appeal, the Petitioner asserts that "USCIS [U.S. Citizenship and Immigration Services] seems to require a 'final' vow in order for a monk to qualify for a religious vocation" and that this requirement "is an unconstitutional violation." The regulatory definition for religious vocation at 8 C.F.R. § 214.2(r)(3) does not reference final vows, but it does require the Petitioner to show that the proposed position requires the Beneficiary to make "a formal lifetime commitment . . . to a religious way of life." For the reasons we have discussed above, the Petitioner has not made such a showing. Furthermore, to the extent that the Petitioner alleges a constitutional violation, we have no jurisdiction to reach that question. *See, e.g., Matter of Fuentes-Campos*, 21 I&N Dec. 905, 912 (BIA 1997). Accordingly, we will not address this issue further.

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. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, the Petitioner has not met this burden.

ORDER: The appeal is dismissed.