U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23870134

Date: JAN. 19, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a religious organization, seeks to extend the Beneficiary's classification as a 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 R-1 nonimmigrant classification allows non-profit religious organizations, or their affiliates, to temporarily employ foreign nationals as ministers, in religious vocations, or in other religious occupations in the United States.

The Director of the California Service Center denied the petition. Since the Petitioner's supporting documents did not corroborate the salary information provided on the underlying petition, the Director concluded that the Petitioner failed to establish how it intends to pay the Beneficiary according to 8 C.F.R. § 214.2(r)(11). We also dismissed the appeal for the same reason.

The matter is now before us on combined motions to reopen and reconsider.

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 the combined motions.[1]

I. LAW

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration; be supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law or policy; and establish that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

[1] We note that this decision does not prejudice or otherwise prevent the Petitioner from filing a new I-129 petition to establish eligibility for the benefit requested.

II. ANALYSIS

A. Motion to Reopen

We will dismiss the Petitioner's motion to reopen. In our prior decision, we found the record lacked sufficient evidence to establish, by a preponderance of the evidence, how the Petitioner intended to pay the Beneficiary the $65,000 salary attested to in the petition. The Petitioner indicated on its employer attestation section of the petition (on page 31 of I-129 R supplement) that the proposed compensation package is a "yearly salary of $65,000." However, the Beneficiary's W-2 and tax returns from 2019 show a significantly lower annual salary. The 2019 Form W-2 shows that the Beneficiary received $28,386.20 in "wages, tips, other compensation" and the Beneficiary's IRS Form 1040 reflects the same figure. The Beneficiary then received a separate IRS Form 1099-MISC which shows "nonemployee compensation" of $27,433.39, which differs from the "other income" amount of $26,866 on the Beneficiary's IRS Form 1040.

On motion, the Petitioner submits two new documents: a letter from the Petitioner's accountant and the Petitioner's 2019 tax returns. The CPA letter states that the Petitioner has the financial ability to compensate the Beneficiary with a salary of $65,000 but does not explain the discrepancy between its attestation and the evidence on record discussed in our prior decision. We also do not find any items on the 2019 tax returns that would explain the inconsistent reporting of the Beneficiary's compensation. Since the new evidence lacks probative information, we conclude that the Petitioner did not meet its burden in establishing its eligibility per 8 C.F.R. § 214.2(r)(11).

Assuming arguendo that the Petitioner meets the burden of showing its intent to compensate the Beneficiary, the Petitioner has not established that the Beneficiary meets the R-1 eligibility requirements. The regulation at 8 C.F.R. § 214.2(r)(1)(ii) requires that a nonimmigrant religious worker "[b]e coming to the United States to work at least in a part time position (average of at least 20 hours per week)" and 8 C.F.R. § 214.2(r)(8) requires the Petitioner to attest "that the alien will be employed at least 20 hours per week." The Petitioner revealed on appeal that Beneficiary does not teach two months of the year because "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." The Petitioner on motion does not dispute or explain this statement. Since the record contains conflicting statements about the Beneficiary's work schedule, we determine that the Petitioner did not establish the R-1 eligibility requirements under 8 C.F.R. § 214.2(r)(1)(ii). *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (requiring resolution of inconsistencies in the record with independent, objective evidence pointing to where the truth lies).

B. Motion to Reconsider

Similarly, we will dismiss the Petitioner's motion to reconsider. On motion, the Petitioner asserts that our previous decision on appeal is erroneous because "there are no set salary requirements for R-1 religious workers" and "the applicable compensation is determined on an individual basis based on the location and nature of work." We agree that there is no set salary amount set by regulations such as prevailing wage, for religious workers and it is up to the employers to set the compensation amount. However, the regulations require that the Petitioner attest to eligibility requirements of a religious worker, including details of the Beneficiary's compensation, and these attestations must be verified

by supporting documents. *See* 8 C.F.R. § 214.2(r)(8) and (11).[2] We dismissed the Petitioner's appeal for this reason. While the Petitioner disagrees with our conclusion, the Petitioner does not identify any error of law or policy in our decision.

III. CONCLUSION

The Petitioner's submission of new evidence does not establish a ground for reopening the proceedings. Additionally, the Petitioner has not demonstrated any error of law or policy in our decision dismissing its appeal.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[2] *See also* Special Immigrant and Nonimmigrant Religious Workers, 72 Fed. Reg. 20442, 20446-47 (proposed Apr. 25, 2007) (where the preamble to the proposed rule discusses how the attestation and evidence requirements safeguard integrity of the religious worker program and provide "objective means of confirming the legitimacy of and commitment to the religious work, . . . and of the employment relationship").