



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

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

In Re: 8188154

Date: JULY 6, 2020

Motion on Administrative Appeals Office Decision

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

The Petitioner, a church, seeks to classify the Beneficiary as a nonimmigrant religious worker to perform services as a pastor. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(R), 8 U.S.C. § 1101(a)(15)(R). This nonimmigrant 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 record did not establish how it intends to compensate the Beneficiary. In addition, she found that the record did not demonstrate the Beneficiary's denominational membership during the two years preceding the filing of the petition or that she has the requisite qualifications as a minister.

The Petitioner appealed the Director's decision, submitting additional evidence. However, we found in our decision that the evidence regarding the non-salaried compensation lacked detail and was otherwise insufficient, and that the Petitioner's new statement about a salary to be offered to the Beneficiary constituted an impermissible material change to the petition. In addition, we found that the Petitioner had not established that the Beneficiary's ordainment as a minister by a different organization met its own qualifications, and that the assertion that the denomination to which the Beneficiary previously belonged was the same as the Petitioner's was not supported by documentary evidence.

On motion, the Petitioner submits new evidence and asserts that the record demonstrates eligibility for the benefit sought.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss both motions.

**I. LAW**

A motion to reconsider is based on an *incorrect application of law or policy*, and a motion to reopen is based on documentary evidence of *new facts*. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. §

103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

## II. ANALYSIS

### A. Motion to Reconsider

A motion to reconsider must establish that our 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).

#### 1. Qualification as a Minister

The Petitioner first asserts that we erred in our previous decision regarding the Beneficiary's qualification as a minister under 8 C.F.R. § 214.2(r)(10). As noted above, we found that the Beneficiary's ordination by the United Church Mission of Trust in Christ (UCMTC) was insufficient to establish her qualification as a minister for the Petitioner, as the record does not show that UCMTC is the same denomination as the Petitioner. In addition, we noted that a statement from the Petitioner's senior pastor, [REDACTED], that she "meets the qualifications [of a minister] because of her knowledge" to be insufficient without supporting evidence of the Petitioner's requirements for ordination of a minister.

On motion, the Petitioner asserts that its Constitution, submitted with its initial filing and again on motion, provides the requirements for a minister, and refers to the following language from Article IV, Section 1:

The Pastor has the sole authority to appoint or ordain an Assistant Pastor. Upon selecting an Assistant, the Pastor shall convey the board of Deacons to discuss the candidate intellectual and spiritual qualifications. To eligible to serve as an Assistant Pastor, the candidate must be in standing with his local and obtaining a letter of good standing from all churches he has served or others.

Although the Petitioner notes that it submitted letters of good standing from other churches which the Beneficiary is served, the passage from the Constitution refers vaguely to "intellectual and spiritual qualities" but does not indicate what those intellectual qualities might be or whether ordainment by UCMTC or another church or denomination is recognized. Accordingly, the Petitioner has not established that our decision regarding the Beneficiary's qualification as a minister was incorrect based upon the evidence of record at the time.

#### 2. Denominational Membership

In addition, the Petitioner also asserts that our decision regarding the Beneficiary's denominational membership in the two years preceding the filing of its petition in December 2017 was in error, stating that a letter from her was provided which indicates that she was a member of the church for at least two years. However, the record does not include such a letter, but does include her ordination certificate from UCMTC dated June 28, 2013, and a certification that as of April 6, 2016, she was

serving as pastor for the “Missionary United Church Trustees in Christ.” We first note that this documentation does not address the entire two-year period immediately preceding the filing of the petition, but establishes only that the Beneficiary was a pastor for what appears to be UCMTC on April 6, 2016. More importantly, the Petitioner does not address the finding in our previous decision that [redacted]’s unsupported assertion regarding the shared beliefs of it and UCMTC is insufficient to demonstrate that she has been a member of the same type of religious denomination. It has not therefore established that the finding in our previous decision regarding her denominational membership was incorrect or that it was based upon an incorrect application of law or policy.

### 3. Intent to Compensate

The Petitioner also asserts our finding that its offer of payments to the Beneficiary of \$1,000 per month was an impermissible material change to the petition was incorrect, indicating that the letter stated that “the non-salaried compensation will be equivalent to a \$1000 which will go towards the Beneficiary’s expenses such as room, board and daily needs.” However, the letter from [redacted] dated January 2, 2019 specifically states that “after a meeting among the leaders, they set apart to give \$1,000.00 every month to [the Beneficiary] so that she may take care herself.” This statement does not reflect the type of non-salaried compensation or payment in kind that the Petitioner clearly stated on the petition, and in its initial support letter, that it would provide, but is rather an indication that the Beneficiary will receive a regular monthly payment or salary. Therefore, the Petitioner has not established that our previous decision regarding how it intends to compensate the Beneficiary was incorrect based on the evidence at the time.

### B. Motion to Reopen

The Petitioner submits additional documentation in support of how it intends to compensate the Beneficiary per 8 C.F.R. § 214.2(r)(11) in the form of bank statements for the period December 2018 through August 2019. This evidence shows that in four out of those nine months, it wrote a check to the Beneficiary in the amount of \$1,000.00. However, as noted above, the Petitioner indicated that it would provide non-salaried compensation to the Beneficiary, and this evidence does not provide further details regarding the form of this non-salaried compensation. Accordingly, this new evidence does not establish how the Petitioner intends to compensate the Beneficiary.

## III. CONCLUSION

For the reasons discussed above, the Petitioner has not established that our previous 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. Further, the new documentary evidence submitted does not overcome the findings in our previous decision and establish the Petitioner’s eligibility for the requested benefit.

**ORDER:** The motion to reconsider is dismissed.

**FURTHER ORDER:** The motion to reopen is dismissed.