



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

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

In Re: 8867698

Date: SEPT. 4, 2020

Appeal of California Service Center Decision

Form I-360, Petition for Special Immigrant Religious Worker

The Petitioner, a church, seeks to classify the Beneficiary as a special immigrant religious worker to perform services as an “Ordained Church Pastor.” See Immigration and Nationality Act (the Act) Section 203(b)(4), 8 U.S.C. § 1153(b)(4). This immigrant classification allows non-profit religious organizations, or their affiliates, to employ foreign nationals as ministers, in religious vocations, or in religious occupations in the United States. See Section 101(a)(27)(C)(ii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii).

The Director of the California Service Center denied the petition, concluding that the Petitioner did not show the Beneficiary possessed the requisite two-year qualifying religious work experience, as required under 8 C.F.R. § 204.5(m)(4). See also 8 C.F.R. § 204.5(m)(2). The Petitioner appeals, submitting a short statement on the Form I-290B, Notice of Appeal or Motion, but no additional evidence.

In these proceedings, it is the Petitioner’s burden to establish, by a preponderance of the evidence, its 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

Foreign nationals who perform full-time, compensated religious work as ministers, in religious vocations, or in religious occupations for non-profit religious organizations in the United States may be classified as special immigrant religious workers. The petitioner must establish that the foreign national beneficiary meets 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)(ii) of the Act).

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.

In addition, the regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to demonstrate that the beneficiary possesses the requisite two-year religious work experience. Specifically, the petitioner must show that the beneficiary has worked “in one of the positions described in [8 C.F.R. § 204.5(m)(2)] . . . for at least the two-year period immediately preceding the filing of the petition.” Under 8 C.F.R. § 204.5(m)(2), qualifying experience is “a full time (average of at least 35 hours per week) compensated position in one of the following occupations”:

- (i) Solely in the vocation of a minister of that religious denomination;
- (ii) A religious vocation either in a professional or nonprofessional capacity; or
- (iii) A religious occupation either in a professional or nonprofessional capacity.

Moreover, the regulation specifies the required evidence relating to a beneficiary’s prior employment, stating:

Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work, must have occurred after the age of 14 If the alien was employed in the United States during the two years immediately preceding the filing of the application and:

- (i) Received salaried compensation, the petitioner must submit IRS [Internal Revenue Service] documentation that the alien received a salary, such as an IRS Form W-2 [Wage and Tax Statement] or certified copies of income tax returns.
- (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.
- (iii) Received no salary but provided for his or her own support, and provided support for any dependents, the petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS [U.S. Citizenship and Immigration Services].

If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

8 C.F.R. § 204.5(m)(11). As noted above, under 8 C.F.R. § 204.5(m)(11)(iii), evidence of compensation may include documentation confirming self-support. USCIS has specified that individuals who rely on self-support to establish the compensation element must be “participating in an established, traditionally non-compensated, missionary program.” Special Immigrant and Nonimmigrant Religious Workers Final Rule, 73 Fed. Reg. 72276-01, 72278, 2008 WL 4997485 (Nov. 26, 2008); see also 8 C.F.R. § 214.2(r)(11)(ii) (2018).

II. ANALYSIS

The record is insufficient to show that the Beneficiary possesses the requisite two-year religious work experience. See 8 C.F.R. § 204.5(m)(4); 8 C.F.R. § 204.5(m)(2). The Petitioner filed the petition in August 2018. It must therefore show that the Beneficiary worked full-time as a qualifying religious worker from August 2016 through August 2018. According to a March 2019 letter from the Petitioner's president of church trustees, the Beneficiary began working as a church minister in June 2016. She "worked as [a] voluntary church minister" without pay until "April 8, 2018, [when] she became a paid church minister with R-1 visa."² The record includes the Beneficiary's 2018 IRS Form W-2, showing that the Petitioner paid her \$10,164 in "[w]ages, tips, other comp." The record also includes bank records that the Petitioner claims show that before April 2018, the Beneficiary received funds from her spouse to cover her living expenses. The Petitioner alleges that the Beneficiary was self-supporting before April 2018.

As noted, individuals who rely on self-support to establish the compensation element must be "participating in an established, traditionally non-compensated, missionary program." Special Immigrant and Nonimmigrant Religious Workers Final Rule, 73 Fed. Reg. at 72278; see also 8 C.F.R. § 204.5(m)(11)(iii); 8 C.F.R. § 214.2(r)(11)(ii). The Petitioner has not presented sufficient documentation demonstrating that the Beneficiary's volunteering work as a church minister constituted her participation "in an established, traditionally non-compensated missionary program." *Id.*, see also 8 C.F.R. § 204.5(m)(11)(iii); 8 C.F.R. § 214.2(r)(11)(ii). Indeed, the Petitioner has indicated that the Beneficiary, while holding the same position, began receiving compensation in April 2018. This evidence does not support a finding that her work as a church minister constituted her participation in an established, traditionally non-compensated, missionary program. As such, evidence that she had volunteered without compensation before April 2018 does not show that she had worked continuously in a full-time, compensated, and qualifying religious worker position between the relevant two-year period. Based on these reasons, the Petitioner has not demonstrated that the Beneficiary possesses the requisite qualifying religious work experience between August 2016 and August 2018. See 8 C.F.R. § 204.5(m)(4); see also 8 C.F.R. § 204.5(m)(2).

III. CONCLUSION

The Petitioner has not established, by a preponderance of the evidence, its eligibility to classify the Beneficiary as an immigrant religious worker. It has not demonstrated that the Beneficiary possesses the requisite two-year qualifying religious work experience. See 8 C.F.R. § 204.5(m)(4); see also 8 C.F.R. § 204.5(m)(2).

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, that burden has not been met.

ORDER: The appeal is dismissed.

² Before filing the instant immigrant petition, the Petitioner filed a nonimmigrant petition, seeking to classify the Beneficiary as a nonimmigrant R-1 religious worker. USCIS approved the nonimmigrant petition in April 2018. See Immigration and Nationality Act (the Act) Section 101(a)(15)(R), 8 U.S.C. § 1101(a)(15)(R).