



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

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

In Re: 20445225

Date: MAY 6, 2022

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant

The Petitioner, a religious organization, seeks to classify the Beneficiary as a special immigrant religious worker to perform services as a senior pastor. *See* Immigration and Nationality Act (the Act or INA) 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 Beneficiary did not possess the requisite two-year qualifying religious work experience. *See* 8 C.F.R. § 204.5(m)(2), (4) (2019). We dismissed the subsequent appeal,¹ concluding that the Petitioner failed to show the Beneficiary's required religious work experience or that he was qualified for the proposed employment. *See* 8 C.F.R. § 204.5(m)(9)(i); *see also* 8 C.F.R. 204.5(m)(5) (defining "minister").

The matter is before us on combined motions to reconsider and reopen the proceeding. Upon review, we will dismiss the Petitioner's combined motions.

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. *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).

The regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to demonstrate 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

¹ Our most recent decision in this matter was *In Re: 13619498* (AAO Aug. 12, 2021).

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.

In addition, the regulation specifies the required evidence relating to the 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 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.

. . . .

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 relating to motions, 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

We will dismiss the Petitioner’s motion to reconsider the matter because it has not “state[d] the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that [our previous] decision was based on an incorrect application of law or [U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security (DHS)] policy.” 8 C.F.R. § 103.5(a)(3). As discussed in our previous decision, the Petitioner has not established eligibility for the petition because

it has not demonstrated that the Beneficiary possesses the requisite two-year religious work experience. Specifically, it has not shown that he worked as a full-time, compensated religious worker “continuously for at least the two-year period immediately preceding the filing of the petition,” which is from March 2017 through March 2019. *See* 8 C.F.R. § 204.5(m)(4); *see also* 8 C.F.R. § 204.5(m)(2).

As discussed in our previous decision, the Petitioner claimed that the Beneficiary worked full-time as a pastor for [redacted] Church, one of the Petitioner’s member churches during the relevant two-year period, but the record did not sufficiently establish that he received compensation for his work. While the record included the Beneficiary’s tax filing documents, such as his U.S. Individual Income Tax Return (IRS Form 1040) and his Miscellaneous Income (IRS Form 1099-MISC), these documents related only to the compensation he received in 2019, not 2017 or 2018. *See* 8 C.F.R. § 204.5(m)(11) (requiring a petitioner to submit IRS documents to confirm a beneficiary’s prior religious work experience in the United States).

The record also included the Beneficiary’s bank statements that listed deposits he made between 2017 and 2019. As explained in our prior decision, these bank statements did not reveal the sources of these funds or confirm that they were compensation the Beneficiary received from [redacted] Church or the Petitioner for his work as a religious worker. The other evidence in the record, including documents entitled “Transaction Detail by Account,” and a lease agreement signed between the Beneficiary and “[redacted] Church,” similarly failed to sufficiently confirm that [redacted] Church or the Petitioner compensated the Beneficiary from March 2017 through March 2019. As noted in our previous decision, the “Transaction Detail by Account” documents are not “payroll record” as the Petitioner claimed, and they do not explain the nature of the purported payments or demonstrate that the Beneficiary received the purported payments for his work as a religious worker. Additionally, we observed in our previous decision that the Petitioner, through the “Transaction Detail by Account” documents, alleged to have paid the Beneficiary with checks, but the Beneficiary’s bank statements did not list the corresponding deposits of all, or even most, of the checks the Petitioner claimed to have issued to him.

On motion, the Petitioner maintains that it has “distribute[d] funds to [the Beneficiary] on a regular basis in support of his service” and that “[t]here are many corresponding checks issued by [the petitioning organization] and deposit[ed] by [the Beneficiary].” In its appellate brief, it lists five checks it purportedly issued to the Beneficiary in 2017 and five checks it purportedly issued to him in 2018. It claims to have issued these checks between October 2017 and December 2017, and between January 2018 and February 2018. Even if we were to accept the Petitioner’s allegation that these checks were compensation the Beneficiary received, they cover only five months between October 2017 and February 2018, and thus are insufficient to confirm that the Beneficiary received compensation for his religious work from March 2017 through the end of 2018.²

Moreover, while the Petitioner claims to have issued approximately 65 checks to the Beneficiary in 2018 and approximately 60 checks to him in 2017, the record does not contain copies of these

² While the relevant two-year period is from March 2017 through March 2019, as discussed, the Beneficiary’s tax documents confirm that he received compensation from the Petitioner in 2019. Thus, our decision focuses on the period between March 2017 through the end of 2018 as relating to the issue of whether the Beneficiary had received compensation for his religious work. *See* 8 C.F.R. § 204.5(m)(4); *see also* 8 C.F.R. § 204.5(m)(2).

cancelled checks, and the Petitioner's bank statements that are in the record do not corroborate the issuance of these checks. We also note that according to the "Transaction Detail by Account" documents, the Petitioner issued checks of varying amounts to the Beneficiary on checks that share the same check numbers. This calls into question the accuracy and legitimacy of the information contained in the "Transaction Detail by Account" documents. Furthermore, according to the "Transaction Detail by Account" documents, the Petitioner paid the Beneficiary over \$40,000 in 2018 and approximately \$36,600 in 2017; yet, the record lacks evidence, such as the Beneficiary's 2017 and 2018 tax documents, corroborating these figures.

In light of the lack of sufficient corroborating evidence in the record concerning the compensation the Beneficiary purportedly received from March 2017 through the end of 2018, the Petitioner has not demonstrated on motion that we erred in finding that it did not show the Beneficiary possessed the requisite two-year qualifying religious work experience. *See* 8 C.F.R. § 204.5(m)(2), (4).

B. Motion to Reopen

Similarly, we will dismiss the Petitioner's motion to reopen the proceeding because it has not "state[d] the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." 8 C.F.R. § 103.5(a)(2). On motion, the Petitioner submits additional documents, including letters dated August 2021 and September 2021, discussing compensation issues. In an August 2021 letter, the lead pastor of [REDACTED] Church stated that between January 2017 and November 2020, the Beneficiary lived rent-free in a home owned by [REDACTED] Church in exchange for his "participation in several ministry opportunities in the community with our church." This letter and the lease agreement show that [REDACTED] Church compensated the Beneficiary, but they do not confirm that the Petitioner or [REDACTED] Church similarly compensated him during the entire relevant two-year period from March 2017 through March 2019. *See* 8 C.F.R. § 204.5(m)(2), (4). Additionally, neither the August 2021 letter from [REDACTED] Church nor other evidence in the record demonstrates that the Beneficiary worked full-time as a religious worker for [REDACTED] Church during the relevant two-year period.

The evidence that the Petitioner has presented on motion is insufficient to overcome our previous finding that it has not shown, between March 2017 and March 2019, the Beneficiary performed full-time and compensated religious work. Without sufficient evidence on compensation, the Petitioner has not established that the Beneficiary possessed the requisite two-year religious work experience, or that the Petitioner is eligible to classify him as a special immigrant religious worker. *See* 8 C.F.R. § 204.5(m)(2), (4). Based on these reasons, we will dismiss the Petitioner's motion to reopen the proceeding.³

III. CONCLUSION

We will dismiss the Petitioner's motion to reconsider the matter because its filing does not establish that we based our prior decision on an incorrect application of law or policy, or that the decision was

³ We need not consider whether, on motion, the Petitioner has submitted sufficient evidence confirming the Beneficiary's qualification for the proposed employment. *See* 8 C.F.R. § 204.5(m)(9)(i); *see also* 8 C.F.R. 204.5(m)(5) (defining "minister"). As the Petitioner has not established that the Beneficiary possessed the required two-year religious work experience, it has not demonstrated eligibility to classify him as a special immigrant religious worker.

incorrect based on the evidence in the record at the time of the decision. *See* 8 C.F.R. § 103.5(a)(3). We will also dismiss the Petitioner's motion to reopen the proceeding because its filing does not state new facts to be provided in the reopened proceeding or be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to open is dismissed.