



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

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

In Re: 23530993

Date: NOV. 14, 2022

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Special Immigrant Religious Worker

The Petitioner, a charitable organization, seeks to classify the Beneficiary as a special immigrant religious worker to perform services as an assistant director. *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.

The Director of the California Service Center denied the petition, concluding that the Petitioner did not establish how it intends to compensate the Beneficiary, that the Beneficiary would work in a full time position (at least 35 hours per week), and that the Beneficiary had been continuously working in a qualifying religious worker position for at least the two years immediately preceding the filing of the petition.

On appeal, the Petitioner asserts that the Director erred in considering the Beneficiary's immigration status when reviewing whether she possessed the requisite two years of continuous work experience in a qualifying religious worker position.<sup>1</sup> 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 *de novo* review, we will dismiss the appeal.

## I. LAW

Non-profit religious organizations may petition for foreign nationals to immigrate to the United States to perform full-time, compensated religious work as ministers, in religious vocations, or in religious occupations. The petitioning organizations 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) of the Act, 8 U.S.C. § 1101(a)(27)(C)).

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<sup>1</sup> The Petitioner indicated on Form I-290B that he would submit a brief within 30 days of filing this appeal. As of the date of this decision, we have not received a brief. Our decision will therefore be based upon the Petitioner's basis statement on Form I-290B.

The regulation at 8 C.F.R. § 204.5(m) provides, in pertinent part, that in order to be eligible for classification as a special immigrant religious worker, a foreign national must:

- (2) Be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position in one of the following occupations as they are defined in paragraph (m)(5) of this section:
  - (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.
- ....
- (4) Have been working in one of the positions described in paragraph (m)(2) of this section, either abroad or in lawful immigration status in the United States,<sup>2</sup> and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. The prior religious work need not correspond precisely to the type of work to be performed.

The regulation at 8 C.F.R. § 204.5(m)(11) addresses the evidentiary requirements to establish prior religious work experience. It provides:

- (11) *Evidence relating to the alien's prior employment.* 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 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.
  - (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

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<sup>2</sup> U.S. Citizenship and Immigration Services (USCIS) no longer requires that the qualifying religious work experience for the two-year period, described in 8 C.F.R. § 204.5(m)(4) and (II), be in lawful immigration status. See USCIS Policy Memorandum PM-602-0119 *Qualifying U.S. Work Experience for Special Immigrant Religious Workers 2* (July 5, 2015), [http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2015/2015-0705\\_Lawful\\_Status\\_PM\\_Effective.pdf](http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2015/2015-0705_Lawful_Status_PM_Effective.pdf) (USCIS Policy Memorandum PM-602-0119).

statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS.

In addition, the regulation at 8 C.F.R. § 204.5(m)(10) addresses the evidentiary requirements relating to the Beneficiary's compensation:

- (10) *Evidence relating to compensation.* Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

## II. ANALYSIS

The Petitioner has indicated it is an organization that, in part, offers housing to individuals with special needs and provides religious services to homebound individuals. As noted above, the Petitioner seeks the Beneficiary's services in the role of assistant director. In his decision, the Director determined, in part, that the record did not establish that the Beneficiary had been continuously employed in a qualifying religious worker position for at least the two years immediately preceding the filing of the petition, which in this case covers the period from March 24, 2016 to March 23, 2018. Specifically, the Director noted that the Beneficiary was not in lawful immigration status during this period, and thus did not have authorization to work in the United States. In addition, the Director pointed out a discrepancy between copies of the Beneficiary's 2016 and 2017 income tax returns, which listed her occupation as "Ministry," and an excerpt from the Petitioner's 2017 Form 990 which lists the Beneficiary as a "volunteer," which as the Director noted would not constitute qualifying work experience.<sup>3</sup>

On appeal, the Petitioner refers to a USCIS policy memo which indicates that we no longer require that the qualifying religious work experience for the two-year period, described in 8 C.F.R. § 204.5(m)(4) and (II), be in lawful immigration status.<sup>4</sup> Accordingly, we withdraw that portion of the Director's decision which relied upon the Beneficiary's immigration status to determine that she did not meet the requirement at 8 C.F.R. § 204.5(m)(4).

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<sup>3</sup> While a religious worker may be uncompensated and provide their own support, USCIS determined that the sole instances where foreign nationals may be uncompensated are those who are "participating in an established, traditionally non-compensated, missionary program." See 73 FR 72275, 72278 (PDF) (Nov. 26, 2008). 6 *USCIS Policy Manual* H.2(C)(2), FN 59. The Petitioner does not claim, nor does the record show, that the Beneficiary was participating in such a program.

<sup>4</sup> See USCIS Policy Memorandum PM-602-0119 *Qualifying U.S. Work Experience for Special Immigrant Religious Workers* 2 (July 5, 2015), incorporated into 6 *USCIS Policy Manual* H.2(C)(2), FN 55, <https://www.uscis.gov/policy-manual/volume-6-part-h-chapter-2>.

However, the Petitioner did not address the discrepancy noted by the Director between its 2017 tax return and the income tax return filed by the Beneficiary. The Applicant must resolve this discrepancy in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, the Petitioner has not explained this discrepancy on appeal or offered independent, objective evidence to resolve it.

In addition, the Petitioner has not addressed the other two grounds of denial stated in the Director's decision. In general, we will not address issues that were not raised with specificity on appeal. The Petitioner did not contest the findings of the Director regarding the requirements of 8 C.F.R. §§ 204.5(m)(2) and (10) or offer additional arguments in his basis statement. We will therefore consider these issues to be waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n. 2 (BIA 2009). Because the Petitioner has not established that the offered position would be full time per 8 C.F.R. § 204.5(m)(2) or that the Beneficiary had been continuously working in a qualifying religious worker position for at least the two years prior to filing the petition per 8 C.F.R. § 204.5(m)(4), the petition will remain denied.

### III. CONCLUSION

The Petitioner did not resolve the discrepancy noted in the Director's decision regarding evidence of the Beneficiary's qualifying work experience, and did not address the two additional grounds for denial noted in that decision. Accordingly, the Petitioner has not established eligibility for the requested benefit.

**ORDER:** The appeal is dismissed.