



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

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

In Re: 25551558

Date: FEB. 24, 2023

Appeal of California Service Center Decision

Form I-360, Petition for Special Immigrant Religious Worker

The Petitioner, a Baptist church, seeks to classify the Beneficiary as a special immigrant religious worker to perform services as an assistant pastor. This fourth preference immigrant classification allows non-profit religious organizations, or their affiliates, to employ foreign nationals as ministers, in religious vocations, or in other religious occupations in the United States. Immigration and Nationality Act (the Act) section 203(b)(4), 8 U.S.C. § 1153(b)(4).

The Director of the California Service Center denied the petition, concluding that the record did not establish that either the Petitioner or the Beneficiary met the requirements of the requested classification. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

## I. LAW

Non-profit religious organizations may petition for foreign nationals, or a foreign national may petition on their own behalf, to immigrate to the United States to perform full-time, compensated religious work as ministers, in religious vocations, or in religious occupations. The foreign national must meet 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)).

Specifically, the foreign national must have been working continuously in a full time, compensated status in one of the three types of qualifying positions, either in the United States or abroad, for at least the two-year period immediately preceding the filing of the petition. 8 C.F.R. § 204.5(m)(4). Evidence of that previous employment must include IRS documentation of salaried or non-salaried compensation if employed in the United States, and comparable evidence if employed outside the United States during this two-year period. If the foreign national received no salary but provided for

their own support, the petitioner must show how support was maintained through verifiable evidence. 8 C.F.R. § 204.5(m)(11).

When a petitioner seeks classification for a minister under this classification, it must show that the position requires an individual who is fully trained and authorized by the denomination to conduct religious worship and other duties performed by members of the clergy, is not a lay preacher, will perform activities related to their religious calling, and will work solely as a minister. In addition, a petitioner must submit evidence of the individual's qualification as a minister, including an ordination certificate or other evidence reflecting acceptance of their qualification as a minister, and evidence of their completion of any prescribed theological education. 8 C.F.R. §§ 204.5(m)(5), (9).

A petitioner must also show that it is a bona fide, non-profit religious organization through evidence of a currently valid determination letter from the Internal Revenue Service (IRS) showing either that it is a tax-exempt organization or a member of a group that is tax-exempt. If a petitioner is a bona fide organization which is affiliated with the religious denomination, it must also submit a determination letter from the IRS. If that determination letter shows that the organization is tax-exempt as something other than a religious organization, it must also establish its religious nature and purpose and complete a religious denomination certificate. 8 C.F.R. § 204.5(m)(8).

In addition, a petitioner must submit verifiable evidence of how it intends to compensate the foreign national, whether through salaried or non-salaried compensation. Such evidence may include evidence of previous compensation for similar positions, budgets showing money set aside for salaries, or other evidence acceptable to USCIS. If IRS documentation is available it must be provided, and if not an explanation of its absence must be submitted along with comparable, verifiable evidence. 8 C.F.R. § 204.5(m)(10).

## II. ANALYSIS

The Petitioner initially submitted its petition without any of the required initial evidence. In response to the Director's notice of intent to deny (NOID), it submitted some of this required evidence. However, the Director concluded that much of the evidence remained lacking, including evidence to establish its status as a bona fide non-profit religious organization, evidence regarding the duties and schedule of the proposed position and how the Beneficiary would be compensated, and evidence relating to the Beneficiary's qualifications and his work experience in the two years preceding the filing of the petition.

On appeal, the Petitioner submits additional evidence to address the issues noted in the Director's decision. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The NOID covered nine pages and provided explanations of the many deficiencies in the initial filing and lists of documents which should be submitted to overcome those deficiencies.

We further note that on appeal the Petitioner does not address all of the deficiencies noted in the Director's decision. For example, while the brief refers to documentation of the duties performed by

the Beneficiary in a qualifying religious worker position in the two years immediately preceding the filing of the petition, it does not mention evidence of the type required under 8 C.F.R. § 204.5(m)(11) to document salaried or non-salaried compensation or the Beneficiary's self-support of himself and his dependents during this period.

Further, even if we were to accept the newly submitted evidence on appeal, it would not sufficiently resolve all of the issues stated in the Director's decision. For instance, the Director noted that the evidence did not establish how the Petitioner would compensate the Beneficiary, as it did not include IRS documentation or an explanation of why it was not available, did not include other verifiable documentation, and did not include a certified English translation of documents in a foreign language. On appeal, the Petitioner's brief references a single check paid to its senior pastor, along with a letter from its Treasurer stating that this is a monthly housing allowance and not reflected on the senior pastor's IRS Form W-2. However, it did not submit English-language translations of the financial statements submitted in response to the Director's NOID, and the previously submitted check does not constitute verifiable evidence of how the Petitioner intends to compensate the Beneficiary. The record therefore remains insufficient in this regard.

The Petitioner also references new evidence regarding the additional deficiencies stated in the Director's decision relating to the Petitioner's tax-exempt status, the nature of the offered minister position, and the Beneficiary's qualifications as a minister have also not been overcome. Because the Petitioner can not establish eligibility under this classification due to the deficiencies noted in the above paragraphs, and because we do not accept this new evidence, we reserve the remaining issues stated by the Director.<sup>1</sup>

In addition to the deficiencies stated by the Director in his decision, we note that the Petitioner has also not established that the offered position would be full-time as required, and has not sufficiently described the Beneficiary's proposed schedule and the extent to which his duties as an assistant pastor would be administrative in nature. These additional deficiencies would need to be addressed in any further proceedings in this matter.

### III. CONCLUSION

The Petitioner has not overcome the multiple deficiencies noted in the Director's decision, and has therefore not established the Beneficiary's eligibility for the special immigrant religious worker classification. The petition will remain denied.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).