U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26244465

Date: JUN. 23, 2023

Appeal of California Service Center Decision

Form I-360, Petition for Special Immigrant Religious Worker

The Petitioner, a religious organization, seeks to classify the Beneficiary as a special immigrant religious worker to perform services as a priest. *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 other 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 establish the Beneficiary has the requisite two-years of the qualifying religious work experience per 8 C.F.R. 204.5(m)(4). The Director then dismissed the Petitioner's subsequently filed motion to reconsider, and 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 to immigrate to the United States to perform full-time, compensated religious work as ministers, in religious vocations, or in other 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. Foreign nationals may self-petition for this classification. *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).

Specifically, 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."

The regulation at 8 C.F.R. § 204.5(m)(4) further states that the prior religious work need not correspond precisely to the type of work to be performed and a break in the continuity of the work during the preceding two years will not affect eligibility so long as: (i) The alien was still employed as a religious worker; (ii) The break did not exceed two years; and (iii) The nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

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.

The regulation at 8 C.F.R. § 204.5(m)(5) defines a minister as an individual who:

(A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct such religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;

(B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;

(C) Performs activities with a rational relationship to the religious calling of the minister; and

(D) Works solely as a minister in the United States, which may include administrative duties incidental to the duties of a minister.

The regulation requires submission of evidence relating to the qualification of a minister, such as a copy of an ordination certificate or similar documents reflecting acceptance of the beneficiary's qualifications in the religious denomination, as well as any evidence showing completed courses for theological education including transcripts, curriculum, and documentation that establishes that the theological institution is accredited by the denomination. 8 C.F.R. § 204.5(m)(9)(i)-(ii). A petitioner in denominations that do not require a prescribed theological education can submit evidence of denomination's requirements of ordination to the minister as well as duties allowed to be performed by the virtue of ordination, levels of ordination, if any, and completion of the denomination's requirements of ordination. 8 C.F.R. § 204.5(m)(9)(iii).

II. ANALYSIS

The Petitioner filed the Form I-360, Petition for Amerasian, Widow or Special Immigrant, on April 24, 2020. With the filing, the Petitioner submitted evidence that the Beneficiary has been working continuously in a full-time compensated religious worker position immediately preceding the filing of the petition, from April 24, 2018, to April 23, 2020, including his income tax returns from 2018 and 2019. The Petitioner also submitted a letter stating that from January 1, 2018, to September 30, 2018, the Beneficiary worked as a volunteer at the petitioning organization without being paid a salary. Besides this letter, the Petitioner did not provide corroborating evidence to show that the Beneficiary was in fact employed full-time in a religious position from April 24, 2018, to September 30, 2018.

The Director denied the petition, concluding that the Petitioner failed to demonstrate the Beneficiary has been continuously working during the qualifying two years pursuant to 8 C.F.R. § 204.5(m)(4). The Director also determined that the Beneficiary was not solely working in a religious position pursuant to 8 C.F.R. § 204.5(m)(2) because the Beneficiary's tax returns showed income from working as an Uber and Lyft driver in 2018 and 2019. The Director further indicated that the Petitioner did not provide any evidence that the Beneficiary was working as a self-supporting missionary in an established, traditionally non-compensated program under 8 C.F.R. § 204.5(m)(11)(iii).

The Petitioner then filed a motion to reconsider the denial with the Director. The Director dismissed the Petitioner's motion, concluding that the Petitioner presented the same facts and arguments previously submitted and did not identify erroneous conclusion of law or statement of fact. 8 C.F.R. § 103.5(a)(3)-(4). The Director also dismissed the Petitioner's argument that the Beneficiary is not required to meet the definitions of special immigrant set forth in sections 101(a)(27)(A)-(C) of the Act. On appeal, the Petitioner raises the same claims made on motion with the Director.

As we noted above, the matter before us is an appeal of the Director's decision dismissing the Petitioner's motion to reconsider. We will therefore address the Petitioner's claims as they relate to whether the Director properly dismissed this motion.

The Petitioner contends on motion with the Director and on appeal that the Beneficiary does not meet the definitions of special immigrant set forth in sections 101(a)(27)(A)-(C) of the Act and that he is therefore not subject to them. Specifically, the Petitioner claims that the Beneficiary did not seek to *enter* the United States solely for the purpose of carrying on the vocation of a minister, or in a religious vocation or occupation as defined in section 101(a)(27)(C) of the Act because the Beneficiary "is already *in U.S.* as a legal resident" (emphasis added). The Petitioner then reasoned that he does not fall under the statute and that requiring him to satisfy the requirements predicated in section 101(a)(27)(C) constituted a legal error.

The Petitioner misunderstands the Beneficiary's status under the Act. The term "immigrant" means every person who is not a citizen or national of the United States, except for those that fall into defined non-immigrant classes. Section 101(a)(3), (15). Review of USCIS records demonstrates that the Beneficiary is not a citizen or national of the United States, nor is he a member of a non-immigrant class defined in section 101(a)(15). Therefore, the Beneficiary is an immigrant under the Act and

subject to its requirements, and we agree with the Director's decision to dismiss this argument by the Petitioner.

We will now evaluate the Petitioner's other claims offered on motion that are not addressed by the Director as the Petitioner raises them again on appeal.

The Petitioner asserts that a violation of due process occurred when the Petitioner's attorney was not contacted during the telephonic site visit. While the Petitioner alleges due process violations, we lack jurisdiction to rule on the constitutionality of law enacted by Congress or of the regulations promulgated by DHS. *See, e.g., Matter of Fuentes-Campos*, 21 I&N Dec. 905, 912 (BIA 1997); *Matter of C-*, 20 I&N Dec. 529, 532 (BIA 1992). Our review is limited to whether the Director complied with the relevant statute and regulatory requirements.

The regulation at 8 C.F.R.§ 204.5(m)(12) relates to inspections, and specifically notes that USCIS may verify evidence through any means it determines to be appropriate, including on-site inspections and interviews with organization officials and any individual it considers pertinent to the integrity of the organization. As the Beneficiary is identified as a minister in the organization, we find his interview permissible under the regulations. In addition, the Petitioner does not provide any precedent decision or statutory or regulatory provision, or USCIS policy to demonstrate that USCIS is required to provide notice prior to site visit.

The Petitioner further contends that the Beneficiary's non-salaried work from April 20, 2018, to September 30, 2018, that falls during the qualifying two years of religious work experience is a permissible break as defined under 8 C.F.R. § 204.5(m)(4). Although the criteria set by 8 C.F.R. § 204.5(m)(4)(i)-(iii) allows for a permissible break during the two years of compensated, full time religious work experience, the issue of a permissible break is not a dispositive issue at hand as the ultimate basis for the petition's denial originates from 8 C.F.R. § 204.5(m)(2)(i) which states that a special immigrant religious worker must work in a full-time position "*solely* in the vocation of a minister of that religious denomination" (emphasis added).

The Petitioner does not dispute that the Beneficiary worked as an Uber and Lyft driver in 2018 and 2019 but explains that the Beneficiary needed to earn additional income to support his family. The Petitioner also does not contend that the Beneficiary only worked as a minister and his driving job is somehow incidental to his duties as a minister. 8 C.F.R. § 204.5(m)(5). Therefore, the Petitioner has not demonstrated that the Beneficiary worked full time solely as a minister during the qualifying two-years and we need not evaluate whether the Beneficiary's six months of non-salaried work is a permissible break as it would not change the outcome of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

In addition, the Petitioner has not submitted evidence that the Beneficiary possesses the requisite qualifications for a minister. 8 C.F.R. § 204.5(m)(9). The record contains only affidavits and letters stating that the Beneficiary received relevant trainings but lacks official documentation such as transcripts or curriculum showing that the Beneficiary received training to be a Sikh priest according to the denominational standards. *Id.* The Petitioner also has not claimed that the denomination does not

require a prescribed theological education and has not submitted any evidence of the denomination's requirements of ordination to be a priest, duties allowed to be performed by the virtue of ordination, levels of ordination, or completion of the denomination's requirements of ordination. *Id.* Therefore, the record does not show that the Beneficiary is an ordained minister pursuant to 8 C.F.R. § 204.5(m)(9).

For the reasons discussed above, we dismiss the appeal. The Petitioner does not offer new evidence or arguments to demonstrate that the Beneficiary worked solely as a priest during the qualifying two years pursuant to 8 C.F.R. § 204.5(m)(2), (4). Furthermore, the Petitioner does not show that the Beneficiary meets the definition of a minister or possesses qualification as a minister under 8 C.F.R. § 204.5(m)(5), (9).

III. CONCLUSION

The Petitioner has not demonstrated that the Director erred in dismissing its motion to reconsider, nor does the record establish the Beneficiary's eligibility for the benefit sought. We will therefore dismiss the appeal for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.