



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

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

In Re: 25232642

Date: MAR. 30, 2023

Appeal of California Service Center Decision

Form I-360, Petition for Special Immigrant Religious Worker

The Petitioner, a Sikh temple (gurdwara), seeks to classify the Beneficiary as a special immigrant religious worker to perform services as a minister (granthi). 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 the Beneficiary had been working continuously in a full time, compensated status in one of the three types of qualifying positions for at least the two-year period immediately preceding the filing of the petition. 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. If the foreign national gained this experience in the United States, the evidence of their work experience must show that they received salaried compensation, non-salaried compensation, or provided for their own support and that

of any dependents. If there is a break in the continuity of this work during the qualifying period, eligibility is not affected so long as the break did not exceed two years, was for further religious training or a sabbatical that did not involve unauthorized work, and the individual remained employed as a religious worker. 8 C.F.R. §§ 204.5(m)(4), (11).

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

If a beneficiary provided for their own support, the petitioner must also provide evidence to establish that they were participating in an established, traditionally non-compensated, missionary program. *See* 73 FR 72275, 72278 (Nov. 26, 2008).

II. ANALYSIS

The sole issue on appeal is whether the evidence establishes that the Beneficiary worked continuously in a full time, compensated status in either a religious occupation or vocation or as a minister during the two-year period immediately preceding the filing of the petition. In this case, that period runs from February 24, 2018 to February 23, 2020. Due primarily to multiple inconsistencies in statements from the Petitioner, Beneficiary, and others, we conclude that the Petitioner has not met this requirement.

The Petitioner initially stated that the Beneficiary “was working as a full-time Honorary-Priest (non-salaried) on self support basis in our organization from August 2016 to March 2018,” and that from the approval of the Petitioner’s second Form I-129, Petition for a Nonimmigrant Worker, on his behalf on March 16, 2018 to September 15, 2020, he returned to working for the Petitioner as a full-time paid employee. However, the Director noted in his notice of intent to deny (NOID) that both the Petitioner and Beneficiary had made statements in support of the third petition seeking R-1 nonimmigrant status

for the Beneficiary [redacted] indicating that he had ceased working for the Petitioner in September 2016, thus contradicting the statements in this petition.

In response to the Director's NOID, the Petitioner's president indicated that after the Beneficiary applied for political asylum in October 2016, he began "volunteer training" in hymn singing with another gurdwara in [redacted] California, while at the same time volunteering full-time for the Petitioner and receiving donations and part time pay, which continued until August 2020.¹ He also explained his earlier statement made in the nonimmigrant petition by stating that the Beneficiary "definitely stopped working" after filing for political asylum, but instead took part in the training and worked on a volunteer basis for the Petitioner, while also "sustaining himself financially on a self-support basis."

The Petitioner also submitted a statement from the Beneficiary with the NOID response, who stated that he worked as a volunteer for the Petitioner while attending the training in [redacted]. He further stated that during the period from October 2016 to August 2020, the Petitioner "mostly used to call me for helping them out on volunteer basis," but also that he was a full-time volunteer and received both donations and part-time pay. In addition, a letter from the gurdwara in [redacted] confirmed the Beneficiary's training during this period, but did not provide any details about the training schedule or content. It also indicates that while the Beneficiary participated in this training, he also "used to work in our Gurdwara" as well for the Petitioner "on volunteer terms."

In his decision, the Director highlighted the conflicting statements made in the R-1 nonimmigrant visa petition and this petition, concluding that for this reason and others the Petitioner had not established that the Beneficiary had been continuously employed in a full-time, compensated status as a minister for at least the two years immediately preceding the filing of the petition. On appeal, the Petitioner states that the Beneficiary worked as a religious minister from "2018 and onwards, when a 2nd R-1 was applied in Feb 2018 which was approved." It also adds that the Beneficiary "had left" the Petitioner (apparently both as an employer and place of residence) on July 31, 2016 and worked "at different places including [the Petitioner]" pursuant to employment authorization based on his application for political asylum.

We first note that the Petitioner's latest account concerning the Beneficiary's employment directly contradicts earlier statements. Specifically, as stated above the Petitioner's NOID response indicated that the Beneficiary worked on a full time, voluntary basis, while also attending training at a different gurdwara, from August 2016 to August 2020, and that during this period he sustained himself financially on a self-support basis and did not live at the Petitioner's gurdwara. This is contrary to its statement on appeal, as well as its statement made in its most recent nonimmigrant petition for R-1 status that the Beneficiary ceased working for it in September 2016. The Petitioner must resolve these inconsistencies in the record concerning the Beneficiary's employment history and status with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

¹ In the same paragraph the Petitioner later alters these dates, stating that the Beneficiary "worked as a full time volunteer employee from August 2016 to August 2020."

As acknowledged by the Director in his decision, the record includes evidence relating to the Beneficiary's compensation during the relevant two-year period, including his IRS Form 1040 individual tax returns for the years 2018 and 2019, IRS Form W-2 wage statement for 2019, IRS Form 1099 miscellaneous income statement for 2018, and paystubs issued by the Petitioner to the Beneficiary from April 9, 2018 to February 9, 2020. The Director noted that the figure in the 2018 Form 1099 of \$4,040 did not show that the Beneficiary had been employed in a full-time, compensated position for the period from March to December 2018.² On appeal, the Petitioner submits additional evidence relating to the Beneficiary's compensation, including his 2018 and 2020 IRS Forms W-2, as well as wage and income transcripts from the IRS for the years 2018, 2019 and 2020, but provides no explanation as to why this evidence was not previously submitted with its initial petition or NOID response. 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 Director's NOID specifically stated that the evidence of record, particularly the tax documentation, did not establish that the Beneficiary had worked in a qualifying position for the two years immediately preceding the filing of the petition, and the Petitioner was provided ample time to submit additional evidence, which it did.

The Petitioner asserts on appeal that the previously submitted 2018 Form 1099 covered the period from January through March 2018, with the remainder of the year evidenced by the newly submitted 2018 IRS Form W-2 and IRS transcripts, as well as lists of checks issued to the Beneficiary which are signed by the Petitioner's Chief Financial Officer. As noted above, we will not consider this new evidence submitted on appeal. *Id.* Further, the Petitioner does not explain the statements from it and the Beneficiary submitted in response to the Director's NOID that indicated that the Beneficiary was self-supporting during this period while also receiving donations and part-time pay. As the Director stated in his decision, while evidence of compensation during the qualifying two-year period may include documentation of self-support, the Petitioner did not establish that the Beneficiary was "participating in an established, traditionally non-compensated, missionary program." See 73 FR 72275, 72278 (PDF) (Nov. 26, 2008). Further, receipt of part-time pay would also not establish that the Beneficiary was employed in a full-time, compensated status.

In addition, the Petitioner's appeal brief does not mention the training at the gurdwara in [redacted] which the Petitioner, Beneficiary and [redacted] gurdwara had stated in their NOID responses had lasted from either August or October 2016 through August 2020. As noted above, a break for religious training or a sabbatical during the qualifying two-year period will not effect eligibility so long as other conditions are met. In a NOID issued in a previous petition filed by the Petitioner on behalf of the Beneficiary [redacted] the Director stated that USCIS records showed the Beneficiary had lived at an address in [redacted] from at least October 2016 to March 2017, and did not indicate a change of address until September 2018 when the Petitioner filed a previous Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on his behalf.³ [redacted] California is more than 150 miles from the Petitioner's location, making it implausible that the Petitioner attended training at the gurdwara in [redacted] while also working or "volunteering" full-time with the Petitioner. Further, as the record includes no detailed information regarding the schedule or content of the claimed

² The compensation offered to the Beneficiary is stated as \$12,500 per year and "proper food and living conditions."

³ The Petitioner withdrew the petition in response to the NOID.

training, and the gurdwara in [] also mentioned that the Beneficiary worked for it during this period without specifying a role or schedule, the record is insufficient to establish that the Beneficiary was participating in religious training which would not disturb the continuity of any qualifying work in the two years immediately preceding the filing of the petition.

Finally, we note that statements and other evidence submitted by the Petitioner are inconsistent regarding the Beneficiary's employment and location at the beginning of the qualifying period. Again, that period began on February 24, 2018. The Petitioner initially stated that the Beneficiary returned to compensated, full time employment status upon the approval of the second nonimmigrant petition seeking R-1 status it filed on his behalf, which was on March 16, 2018. Also, we note that the earliest paystub from 2018 in the record covers the period from April 9 to April 22, 2018. Further, as the provision of room and board are part of the Beneficiary's compensation, the ambiguity in the record about his residence during the qualifying period is also a relevant factor. Statements in the NOID indicate that he did not return to living at the Petitioner's gurdwara until August 2020, while on appeal this is modified to "2018 and onwards." Taking all of the above into account, the record is insufficient to establish that the Beneficiary continuously worked in a religious occupation or vocation, or as a minister, in a full time, compensated status from February 24, 2018 until February 23, 2020 per the regulation at 8 C.F.R. § 204.5.(m)(4). The Petitioner has therefore not established eligibility for the requested immigrant classification, and the petition will remain denied.

ORDER: The appeal is dismissed.