



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

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

In Re: 26053881

Date: MAY 2, 2023

Appeal of California Service Center Decision

Form I-360, Petition for Special Immigrant Religious Worker

The Petitioner, an Eastern Orthodox church, 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 record did not establish eligibility for the requested classification as the Petitioner did not file the required initial evidence. 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

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 1101(a)(27)(C)(ii) of the Act). The petitioner must establish that the foreign national beneficiary meets the eligibility criteria by submitting the required evidence at 8 C.F.R. § 204.5(m) as described in detail below.

The regulation at 8 C.F.R. § 204.5(m)(1) requires that a beneficiary has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States for at least two years immediately preceding the filing of the petition.

A beneficiary must be coming to work in a full time (at least 35 hours per week) compensated position in the vocation of a minister of a religious denomination. 8 C.F.R. § 204.5(m)(2). 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).

A beneficiary must also be "coming to work for a bona fide non-profit religious organization in the United States, or a bona fide organization which is affiliated with the religious denomination in the United States." 8 C.F.R. § 204.5(m)(3). A petitioner must 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. 8 C.F.R. § 204.5(m)(8)(i)-(ii). 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)(iii).

The regulation further requires that the special immigrant religious worker must have been working, either abroad or in the United States¹ for at least the two-year period immediately preceding the filing of the petition. 8 C.F.R. § 204.5(m)(4). The regulation at 8 C.F.R. § 204.5(m)(11) addresses the evidentiary requirements to establish prior religious work experience and provides that qualifying prior experience can be shown by submitting IRS documentation of salaried compensation or non-salaried compensation.

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).

Finally, 8 C.F.R. § 103.2(b)(1) provides that "[e]ach benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions." The regulation at 8 C.F.R. § 103.2(b)(8)(ii) states:

¹ 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 (11), 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 (USCIS Policy Memorandum PM-602-0119).

Initial evidence. If all required initial evidence is not submitted with the benefit request or does not demonstrate eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.

II. ANALYSIS

The Director determined that the Petitioner did not submit the required initial evidence and thus, the record did not demonstrate eligibility for the requested classification. On appeal, the Petitioner claims the Director erred in denying the petition without first issuing a request for evidence (RFE). However, the Petitioner does not cite to any law or regulations to support this claim. Rather, the Petitioner states that it can send “a more extensive brief if so required” within the allotted 30 days, but it does not file such brief with our office.

The Director is not required to issue an RFE in every potentially deniable case and has discretionary authority to deny the petition for lack of initial evidence without issuing an RFE. 8 C.F.R. § 103.2(b)(8)(ii); *see also* 1 USCIS Policy Manual, E.6(F), <https://www.uscis.gov/policy-manual> (stating that USCIS has the discretion to deny a benefit request without issuing an RFE or NOID). Upon de novo review, we agree with the Director that the Petitioner did not demonstrate eligibility for the special immigrant religious worker classification because it did not submit the required evidence according to 8 C.F.R. § 204.5(m)(8)-(11).

The Petitioner claims that it sent the evidence of “religious and tax-exempt status of the organization” and the Beneficiary’s “approval by the Patriarchate” and submits the following documents on appeal: two letters from [redacted] the petitioning organization’s signatory, confirming that the Beneficiary has been member of the Ukrainian Orthodox church since 2020; a letter attesting to the Beneficiary’s religious work as a priest at the [redacted] in Florida for last three years; an IRS letter showing assignment of an employer identification number (EIN);² and photos, bulletins, and brochures demonstrating church activities and schedules. However, the record does not indicate that the Petitioner filed these documents prior to the appeal. The initial filing only contains the church’s website printout pages and proof of the Beneficiary’s immigration status and biographical information, such as his passport pages, social security card, and driver’s license. Even if the Petitioner initially submitted these documents, the record still lacks the remaining initial evidence required under the regulations at 8 C.F.R. § 204.5(m)(8)-(11) and is not sufficient to establish the eligibility for the requested classification.³

The Petitioner also states that the ongoing Ukrainian war is impacting the church’s ability to minister to the rapidly growing Ukrainian population in the United States. However, the regulations provide no exception to any of the required initial evidence due to a matter of hardship and we do not have the discretion to waive the regulatory requirements.

² Although the Petitioner characterized this IRS letter as evidence of “religious and tax-exempt status of organization,” the letter is not a proof of its tax-exempt status as it only proves that the Petitioner is assigned an EIN number. The IRS letter specifically states that “[a]ssigning an EIN number does not grant tax-exempt status to non-profit organizations.”

³ We also note that the Petitioner marked “no” on Form I-360, Part 9 (Prospective Employer Attestation), page 11, item 11. By this, the Petitioner acknowledges that the Beneficiary has not been a religious worker for at least two years immediately preceding the filing of the petition and does not meet the eligibility criteria for the classification at 8 C.F.R. § 204.5(m)(4).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established the Beneficiary's eligibility for the special immigrant religious worker classification. The petition will remain denied.

ORDER: The appeal is dismissed.