



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

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

In Re: 25551664

Date: MAY 08, 2023

Appeal of California Service Center Decision

Form I-360, Petition for Special Immigrant Religious Worker

The Petitioner, a non-denominational church, seeks to classify the Beneficiary as a special immigrant religious worker to perform services as a staff minister. 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 how the Petitioner intends to compensate the Beneficiary. In addition, the Director concluded that the offered position did not qualify as a religious occupation or vocation, or as a minister, and that the Petitioner had not established that the Beneficiary is qualified as a minister. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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)).

Initial evidence filed with a petition for a religious worker must show how the petitioner intends to compensate the foreign national. This must include verifiable evidence showing how salaried or non-salaried compensation will be provided, or how the foreign national will be self-supporting. In the

case of salaried or non-salaried compensation, this may include evidence of past compensation for similar positions, budgets showing money set aside, or verifiable documentation of room and board. In addition, IRS documentation must be submitted, if available. 8 C.F.R. § 204.5(m)(11).

A religious worker is one engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, or as a minister. A minister is an individual who:

- Is fully authorized and trained to conduct religious worship and other duties usually performed by authorized members of the denomination's clergy;
- Is not a lay preacher;
- Performs activities with a rational relationship to the religious calling of the minister; and
- Works solely as a minister in the United States, which may include incidental administrative duties.

8 C.F.R. §§ 204.5(m)(5).

If the foreign national is a minister, the petitioner must submit the following evidence:

- The foreign national's certificate of ordination or similar documents showing acceptance of their qualifications by the denomination; and
- Evidence that the foreign national has completed any course of prescribed theological education at an accredited theological institution recognized by the denomination, including transcripts, curriculum, and documentation of the institution's accreditation.

If the denomination does not require a prescribed theological education, the petitioner must submit evidence of the denomination's requirements for ordination, duties allowed to be performed by virtue of ordination, any levels of ordination, and the foreign national's completion of the requirements for ordination as a minister. 8 C.F.R. § 204.5(m)(9).

A petitioner under this classification must also establish that is either a bona fide non-profit religious organization in the United States, or that it is a bona fide organization which is affiliated with the religious denomination. If the petitioner is the former, it must submit a currently valid IRS determination letter showing that it is a tax-exempt organization or is recognized under a group tax-exemption. If the petitioner is a bona fide religious organization that is affiliated with the religious denomination, and has been granted tax-exempt status as something other than a religious organization, in addition to a currently valid determination letter from the IRS, it must submit documentation showing its religious nature and purpose, as well as organizational literature describing the religious purpose and nature of its activities. 8 C.F.R. §§ 204.5(m)(5), (8).

Finally, 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. To document this work experience, if the foreign national received salaried or non-salaried compensation, the petitioner must submit IRS documentation of that salary, if available.

8 C.F.R. §§ 204.5(m)(4), (11). If a beneficiary provided for their own support, the petitioner must show how support was provided, and also provide evidence to establish that the foreign national was participating in an established, traditionally non-compensated, missionary program. *See* 73 FR 72275, 72278 (Nov. 26, 2008).

II. ANALYSIS

As noted above, the Director's decision focused on two areas of ineligibility: whether the Petitioner had established how it intended to compensate the Beneficiary, and whether the offered position qualifies as a religious occupation or vocation or as a minister.¹ However, after review of the petition, we do not agree with the basis of the Director's conclusions, and therefore withdraw her decision in its entirety. On remand, the Director should reconsider each of the requirements listed below and issue a new decision consistent with the analysis provided.

A. Compensation

The Petitioner indicated on Form I-360 that the Beneficiary would be compensated with a \$1000 per month housing allowance. As evidence of how it intended to compensate the Beneficiary, the Petitioner submitted the following evidence in response to the Director's request for evidence (RFE):

- The Beneficiary's IRS Form 1040 federal tax returns for the years 2016-21
- The Beneficiary's IRS Form W-2s from 2019-21
- The Beneficiary's paystubs and payroll information from 2019-21
- The Petitioner's management report dated April 7, 2022

The Forms W-2, issued by the Petitioner during the Beneficiary's previous employment in R-1 nonimmigrant status, indicate that in 2019, the Beneficiary received a housing allowing of \$6,250. This was followed by housing allowances of \$11,000 and \$12,000 in 2020 and 2021, respectively.

In her decision, the Director noted that in every year of the Beneficiary's submitted tax returns, his occupation was listed as "business owner," and that the forms did not reflect the receipt of any income from the Petitioner. She also referred to a letter from the Beneficiary in which he describes the coffee business he owns and from which he states he derives passive income, and noted that the Petitioner had attested on Form I-360 that he would not be engaged in secular employment. The Director concluded that because of these issues, the Petitioner had not demonstrated how it intended to compensate the Beneficiary.

On appeal, the Petitioner asserts that the record does show that the Beneficiary received the promised housing allowance while employed in R-1 status.² Based on the evidence of the W-2 forms, we agree. As for the Director's concerns about this income not being reflected on the Beneficiary's federal tax

¹ The Director also appears to have determined that the Beneficiary did not qualify as a minister.

² The Petitioner also argues that the Beneficiary was allowed self-support in his R-1 status, and that his previous secular employment does not invalidate the Petitioner's attestation. Regarding self-support, the Petitioner has not provided evidence to support this assertion, but because we find that the Petitioner has established how it intends to compensate the Beneficiary, we need not address the merits of this argument. We will address the issue of the Beneficiary's secular employment separately below.

return, we take administrative notice that rental allowances paid to a minister are considered a parsonage and excluded from income tax.³ We therefore conclude that the Petitioner has established how it intends to compensate the Beneficiary.

B. Position for a Religious Worker

The Petitioner indicated on Form I-360 that the Beneficiary would be employed as a minister. However, despite acknowledging receipt of evidence regarding the Beneficiary's ordination status and the title of the offered position, staff minister, the Director incorporated the regulations regarding the requirements for a *religious occupation* in his decision, not those pertaining to a minister, and determined that the position did not qualify as a religious occupation. While the decision also includes a statement regarding the lack of evidence of the Beneficiary's religious study or training, it then continues to discuss the Beneficiary's secular employment, making the basis for the Director's determination unclear.

Per 8 C.F.R. §§ 103.3(a)(1)(i), (iii), USCIS must fully explain the specific reasons for a denial so that the affected party has a fair opportunity to contest the decision and the AAO has an opportunity to conduct a meaningful appellate review. *cf. Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that the reasons for denying a motion must be clear to allow the affected party a meaningful opportunity to challenge the determination on appeal). On remand, the Director should focus on the requirements relating to the position of a minister at 8 C.F.R. § 204.5(m)(5) in determining whether the offered position qualifies as one for a religious worker. Further, since the Beneficiary's secular employment does not pertain to the qualification of the offered position, it should be considered only as directed below.

C. The Beneficiary's Qualification as a Minister

As noted above, in discussing whether the position qualifies as a religious occupation or vocation, or as a minister, the Director briefly touched on the Beneficiary's qualification as a minister, but did not reach a formal conclusion on this issue. On remand, the Director should consider all evidence submitted in support of the Beneficiary's qualification as a minister per the requirements at 8 C.F.R. § 204.5(m)(9).

D. The Beneficiary's Secular Employment

As previously stated, the Director improperly considered the evidence of the Beneficiary's secular employment when considering both the Petitioner's intention to compensate him and whether the offered position qualifies as either a religious occupation, religious vocation, or a minister. However, his secular employment, and the Petitioner's awareness of it, are relevant to whether the Petitioner misrepresented a material fact when filing the petition on his behalf.

The regulation at 8 C.F.R. § 204.5(m)(7) includes a list of attestations which must be signed and dated by an authorized official of the prospective employer of an individual seeking classification as a religious worker. Among these is the following:

³ See IRS Publication 517 (2022), Social Security and Other Information for Members of the Clergy and Religious Workers, p. 9.

That the alien will not be engaged in secular employment, and any salaried or non-salaried compensation for work will be paid to the alien by the attesting employer

On the instant petition, the Petitioner attested that the Beneficiary will not be engaged in secular employment.

The Petitioner does not dispute that the Beneficiary is the 100% owner of [redacted] [redacted] which operates two coffee shops near the Petitioner's location. The evidence shows that the Beneficiary has owned the company since at least 2016, and was still the owner at the time the petition was filed. In addition, during an onsite inspection at the Petitioner's premises conducted on January 3, 2019 in conjunction with its R-1 petition on behalf of the Beneficiary, the Petitioner's signatory stated to a USCIS officer that she was aware that the Beneficiary owned and operated a coffee business.

USCIS will deny a visa petition if the petitioner conceals a material fact or submits evidence which contains false information. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), states that "in general - any alien, who by fraud or willfully misrepresenting a material fact, seeks (or has sought to procure, or who has procured) a visa, other documentation, or admission to the United States or other benefit provided under the Act is inadmissible." A finding of willful misrepresentation of material fact against a petitioner or beneficiary requires the following elements:

- The petitioner or beneficiary procured, or sought to procure, a benefit under U.S. immigration laws;
- The petitioner or beneficiary made a false representation;
- The false representation was willfully made;
- The false representation was material; and
- The false representation was made to a U.S. government official.

See generally 8 USCIS Policy Manual J.2(B), <https://www.uscis.gov/policymanual>.

A misrepresentation is willful if it is "deliberately made with knowledge of [its] falsity." *Matter of S- and B-C-*, 9 I&N Dec. 436, 445 (BIA 1960; A.G. 1961); *see also Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975) (noting that, unlike fraud, a finding of willfulness does not require an "intent to deceive"). To be considered material, the misrepresentation must be one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility, and which might well have resulted in a proper determination that he be excluded." *Matter of Ng*, 17 I&N Dec. 536, 537 (BIA 1980).

On remand, the Director should consider whether the Petitioner's negative response to the question of whether the Beneficiary would be engaged in secular employment constituted a willful misrepresentation of a material fact. In doing so, the Director should provide the Petitioner an opportunity to submit additional evidence relating to this issue, to include evidence to support the Beneficiary's assertion that he earns passive income from his business.

E. The Petitioner's Non-Profit Status

In addition to the grounds for denial raised by the Director in her decision, on remand she should consider whether the Petitioner has established that it is a bona fide non-profit religious organization. The Director should specifically consider the IRS determination letter dated September 4, 2014 for [REDACTED] and note that the Employer Identification Number (EIN) listed on this letter differs from the Petitioner's as found on the Beneficiary's Forms W-2 as well as in Part 1, Question 5 of Form I-360.

F. The Beneficiary's Previous Employment

Another additional ground for denial that the Director should consider on remand concerns the Beneficiary's continuous employment in a qualifying religious worker position in the two years immediately preceding the filing of the petition on his behalf. To document that this requirement has been met, the Petitioner must submit evidence IRS documentation showing the Beneficiary's receipt of salaried or non-salaried compensation, or in limited circumstances, evidence of self support. In this case, the relevant period is from February 1, 2019 to January 31, 2021. We previously acknowledged receipt of the Beneficiary's Forms W-2 showing that he received a housing allowance in the years 2019, 2020, and 2021, and the record also includes paystubs for those years. On remand, the Director should review this evidence to determine whether it establishes the Beneficiary's continuous employment as a religious worker during the entirety of the qualifying period.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.