U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22417264

Date: SEP. 30, 2022

Motion on Administrative Appeals Office Decision

Form I-129, Petition for Nonimmigrant Worker (Religious Worker – R-1)

The Petitioner, a Sikh Temple, seeks to classify the Beneficiary as an R-1 nonimmigrant religious worker to perform services as a priest. *See* Immigration and Nationality Act (the Act) Section 101(a)(15)(R), 8 U.S.C. § 1101(a)(15)(R). The nonimmigrant R-1 classification allows non-profit religious organizations, or their affiliates, to temporarily employ foreign nationals as ministers, in religious vocations, or in religious occupations in the United States.

The Director of the California Service Center denied the petition. We then dismissed the appeal, concluding that the Petitioner did not submit sufficient documentation confirming that the Beneficiary would likely work as a religious worker according to the terms of employment specified in the petition, or work on average at least 20 hours per week as required under 8 C.F.R. § 214.2(r)(1)(ii) (2019). Later, we dismissed the Petitioner's combined motions to reconsider and reopen the proceeding.[1]

The matter is again before us on a motion to reopen the proceeding. The Petitioner submits additional evidence on motion, claiming that the documentation establishes its eligibility to classify the Beneficiary as an R-1 nonimmigration religious worker. In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Upon review, we will dismiss the motion.

I. LAW

A. Motion to Reopen

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

Motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered

[1] Our previous decision in this matter was ID# 20262418 (AAO FEB. 28, 2022).

evidence. *See INS v. Doherty*, 502 U.S. 314, 323 (1992) (citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *See INS v. Abudu*, 485 U.S. at 110.

B. Nonimmigrant Religious Worker

Non-profit religious organizations may petition for foreign nationals to work in the United States for up to five years to perform religious work as ministers, in religious vocations, or in religious occupations. The petitioning organization must establish, among other requirements, that the foreign national beneficiary has been a member of a religious denomination for at least the two-year period before the date the petition is filed. *See generally* Section 101(a)(15)(R) of the Act; 8 C.F.R. § 214.2(r).

Specifically, the regulation at 8 C.F.R. § 214.2(r)(1) explains:

> To be approved for temporary admission to the United States, or extension and maintenance of status, for the purpose of conducting the activities of a religious worker for a period not to exceed five years, a [noncitizen] must:
>
> (i) Be a member of a religious denomination having a bona fide non-profit religious organization in the United States for at least two years immediately preceding the time of application for admission;
>
> (ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week);
>
> (iii) Be coming solely as a minister or to perform a religious vocation or occupation . . . ;
>
> (iv) Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and
>
> (v) Not work in the United States in any other capacity . . . .

II. ANALYSIS

By regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). The issue before us is whether the Petitioner has submitted new facts supported by documentary evidence to warrant reopening the petition. For the foregoing reasons, we will dismiss the motion.

In our previous decision, we determined that the record did not establish that the Beneficiary would, more likely than not, work as a religious worker according to the terms of employment specified in the petition or work on average at least 20 hours per week as required under 8 C.F.R. § 214.2(r)(1)(ii). We concluded, among other things, that the Petitioner had submitted insufficient and inconsistent documentation regarding the Beneficiary's work schedule. We noted that page 5 of the petition stated that the proffered position was a full-time position, and that the Petitioner indicated in its June 2020 letter that the Beneficiary "will work full time and will work 6 to 8 hours daily." In another document

entitled "Daily Schedule," the Petitioner presented total work hours for the Beneficiary as 17 hours per week, less than the requisite 20 hours per week. *Id.* The "Daily Schedule" also claimed that if the need arose, the Beneficiary would work an "additional twenty-three hours" a week, but the Petitioner did not demonstrate how frequently or how likely such need would arise.

We also discussed other inconsistencies in the record concerning the Beneficiary's proposed work schedule. For example, we observed the Petitioner's June 2020 letter stated that the Beneficiary would perform worship services from Monday through Saturday, twice a day, between 5:00 am and 6:00 am, and between 6:00 pm and 8:00 pm, and that the Beneficiary would participate in two services on Sunday, "one in the morning and one in the afternoon." These statements, however, contradicted the "Daily Schedule," which stated that the Beneficiary would participate in one service, not two services, each day. Also, the duration of the services as noted in the letter was inconsistent with the information stated in the "Daily Schedule."

In support of the previous motion to reopen, the Petitioner offered a September 2021 letter in which it asserted that the Beneficiary would work 2, 2½, or 3 hours each day from Sunday through Friday, and would work 15 ½ hours on Saturdays for a total of 30 hours per week. This letter contradicted both the "Daily Schedule" and the June 2020 letter, because neither document states that the Beneficiary would work the long hours on Saturday as noted in the September 2021 letter. We concluded that the Petitioner did not resolve the inconsistencies concerning the Beneficiary's intended work schedule as a religious worker. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (stating "it is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence" and that "[a]ttempts to explain or reconcile the conflicting accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice"). We dismissed the Petitioner's motions, in part, determining that the record lacked sufficient probative evidence to substantiate that the Beneficiary would work on average at least 20 hours per week as required under 8 C.F.R. § 214.2(r)(1)(ii). *Chawathe*, 25 I&N Dec. at 375-76.

In support of the instant motion, the Petitioner offers a March 2022 letter containing a new work schedule for the Beneficiary, noting that the schedule was "approved and certified by all [of the Petitioner's] current/previous Executive committee members and office bearers." Under this new schedule, the Beneficiary works 5 hours a day from Monday through Saturday, and 6½ hours on Sunday. The number of the Beneficiary's work hours specified in the new schedule is inconsistent with the work hours presented in the September 2021 letter, as discussed above.

In general, a few errors or minor discrepancies are not reason to question the credibility of a petitioner seeking immigration benefits. *See Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003)(upholding the AAO's finding that evidence in that matter was not credible). However, if a petition includes serious errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after an officer provides an opportunity to rebut or explain, then the inconsistencies will lead USCIS to conclude that the facts stated in the petition are not true. *See Matter of Ho*, 19 I&N Dec. at 591.

In our previous decision, we informed the Petitioner that when there are inconsistencies in the record, the Petitioner must resolve and reconcile them with independent, competent, and objective evidence. *Id.* In the instant motion to reopen, the Petitioner does not explain why the newly submitted March 2022

work schedule differs from the work schedule put forth in its September 2021 letter, nor does it discuss the reasons for the variances in the Beneficiary's work schedule offered in other material within the record, which we discussed in detail in our previous decision. Here, the Petitioner initially indicated that the Beneficiary would be employed by the Petitioner as a religious worker on a full-time basis. Later, the Petitioner provided inconsistent documentary evidence indicating that the Beneficiary would work as little as 17 hours a week should the petition be approved. On motion, the Petitioner did not address our previously articulated concerns regarding the lack of probative evidence to show that the proffered position qualifies for the R-1 nonimmigrant classification in this regard. Therefore, the evidence the Petitioner submits on motion, specifically the March 2022 letter, does not credibly corroborate the Petitioner's assertions in the petition that the Beneficiary will, more likely than not, work on average at least 20 hours per week as required by 8 C.F.R. § 214.2(r)(1)(ii), let alone as a full-time religious worker.

Additionally, we also dismissed the Petitioner's previous motion to reopen as the record did not demonstrate the Petitioner's need for the Beneficiary's services in light of the Petitioner's earlier assertions that in addition to the Beneficiary, it will have four other religious workers serving the same congregation, performing the same or similar duties. While the Petitioner indicates in the March 2022 letter that it "is in urgent need of a priest on temporary basis and it is hard to find qualified priests in the [United States]," on motion, the Petitioner did not present new facts supported by documentary evidence to show that it requires the Beneficiary's services as a priest in addition to the four other priests that serve its congregation.

Accordingly, the Petitioner's motion to reopen has not "state[d] new facts and be supported by documentary evidence," as required under 8 C.F.R. § 103.5(a)(2). For these reasons, the motion does not meet the requirements of a motion to reopen.

III. CONCLUSION

We will dismiss the Petitioner's motion to reopen because the additional evidence does not address all the concerns we raised in our previous decision or credibly demonstrate the Petitioner's eligibility to classify the Beneficiary as an R-1 nonimmigrant religious worker.

ORDER: The motion to reopen is dismissed.