U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26988332

Date: JUN. 6, 2023

Appeal of California Service Center Decision

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

The Petitioner, a church, seeks to extend the Beneficiary's classification as a nonimmigrant religious worker to perform services as a "Catholic Clergy." *See* Immigration and Nationality Act (the Act) section 101(a)(15)(R), 8 U.S.C. § 1101(a)(15)(R). This R-1 nonimmigrant classification allows non-profit religious organizations, or their affiliates, to temporarily employ foreign nationals as ministers, in religious vocations, or in other religious occupations in the United States.

The Director of the California Service Center denied the petition, concluding that the Petitioner did not submit the R-1 Classification Supplement to Form I-129 and did not provide sufficient evidence of previous R-1 employment. 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 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 and will be coming to work at least in a part time position (average of at least 20 hours per week). *See generally* Section 101(a)(15)(R) of the Act; 8 C.F.R. § 214.2(r).

The regulation at 8 C.F.R. § 214.2(r)(8) requires the petitioner to complete, sign and date an attestation prescribed by USCIS and submit it along with the petition. The petitioner must specifically attest to

all items listed at 8 C.F.R. § 214.2(r)(8)(i)-(xi), including that the beneficiary will receive salaried or non-salaried compensation and will be employed for at least 20 hours per week.

The regulation at 8 C.F.R. § 214.2(r)(12) requires that for any request for an extension of stay as an R-1, the petitioner must include initial evidence of the previous R-1 employment for the beneficiary.

II. ANALYSIS

We will first address the Director's finding that the Petitioner did not submit the R-1 Classification Supplement that contains employer's attestation. The record demonstrates that the Petitioner filed the petition on February 9, 2022, with the signed copy of the Form I-129, Petition for Nonimmigrant Worker, but did not include the Form I-129's R-1 Classification Supplement. The Director issued a request for evidence (RFE) and instructed the Petitioner to complete and submit the supplement form along with the employer's attestation, but the record shows that the Petitioner did not include them in his RFE response.

On appeal, the Petitioner admits that it failed to provide the supplement form and the employer's attestation because "we were confused when we replied to RFE and did not submit it at the time, thinking that your office was requesting something else." The Petitioner then claims that the denial of the petition was erroneous without specifically identifying factual or legal errors made by the Director and submits its completed supplement form on appeal.

We agree with the Director's decision to deny the case pursuant to 8 C.F.R. 103.2(a)(1) which provides that the instructions contained on an application or petition are to be given the force and effect of a regulation. The instruction to Form I-129 states that the petition must be filed with the employer's attestation, which is part of the R-1 Classification Supplement to Form I-129, completed, signed, and dated by an authorized official of the petitioner. *See also* 8 C.F.R. § 214.2(r)(8)(requiring the Petitioner to complete, sign, and date an attestation prescribed by USCIS and submit it along with the petition). The Petitioner bears the burden of establishing eligibility for benefits in this matter. *See Matter of Chawathe*, 25 I&N Dec. at 375-76. Here, the Petitioner did not meet its burden of following the instructions and filing a complete petition along with the attestation.

As the Petitioner did not submit the R-1 Classification Supplement to the Director in its initial filing or after the Director had specifically requested in RFE, we will not consider the supplement form and the employer's attestation submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose" and that "we will adjudicate the appeal based on the record of proceedings" before the Director); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

We will now address the Director's finding that the Petitioner did not provide evidence of compensation to demonstrate previous R-1 employment pursuant to 8 C.F.R. § 214.2(r)(12). This regulation applies to an application for an extension of stay as an R-1 nonimmigrant religious worker. *See* 8 C.F.R. § 214.2(r)(12). An application for extension of stay is concurrent with, but separate from, the R-1 nonimmigrant petition. The regulation at 8 C.F.R. § 214.1(c)(5) (2021) makes clear that there is no appeal from a denial of an application for extension of stay. We therefore lack jurisdiction to

review a denial of an application for extension of stay and decline to address the issue regarding evidence of previous R-1 employment.

III. CONCLUSION

The Petitioner has not established, by a preponderance of the evidence, eligibility to classify the Beneficiary as an R-1 nonimmigrant religious worker. Specifically, the Petitioner did not comport with the form instructions in filing the R-1 Supplement and providing the employer's attestation under 8 C.F.R. § 214.2(r)(8) despite the opportunity to cure the deficiency by the Director. It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Here, the Petitioner has not met this burden.

ORDER: The appeal is dismissed.