



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

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

In Re: 25920648

Date: MAR. 14, 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 classify the Beneficiary as a nonimmigrant religious worker to perform services as a “maintenance operator.” *See* Immigration and Nationality Act (the Act) section 101(a)(15)(R), 8 U.S.C. § 1101(a)(15)(R). This nonimmigrant 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, concluding that the record did not establish that the position offered constitutes work in a religious occupation. 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. *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)(3) provides the following relevant definitions for “religious occupation”:

Religious occupation means an occupation that meets all of the following requirements:

- (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination;

- (B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination;
- (C) The duties do not include positions which are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible; and
- (D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

....

Religious worker means an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister.

8 C.F.R. § 214.2(r)(3).

II. ANALYSIS

The Petitioner initially submitted the following summary of duties in the R-1 Classification Supplement to Form I-129:

Provide technical support for the various mechanical systems on the church property, develop and implement procedures to troubleshoot and resolve any issues that may arise. Prevent mechanical failures with consistent monitoring and maintenance.

The Director found that the Beneficiary's duties described above did not meet the regulatory definition of religious occupation and are primarily administrative or support, similar to "janitors or maintenance workers" specifically excluded by the regulation. The Director requested additional evidence to address the deficiency in August 2022. In response, the Petitioner submitted a November 2022 letter, stating:

would be directly involved in the work of the ministry, which is religious functions of daily preaching and teaching, preparation for all ministerial functions and activities, including Bible study, ministry to the sick and serving of sacrament.

As the Petitioner's letter provided a new set of duties completely different from the one previously submitted, the Director concluded that this RFE response materially changed the Petitioner's initial petition.

On appeal, the Petitioner submits a brief, through counsel, stating that it submitted clarification to the duties initially proposed on the petition and did not materially change the original description of duties. No documentary evidence is submitted in support of these assertions. Assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations.

Upon de novo review, we affirm the Director's conclusion that the Petitioner materially altered the original petition's proposed employment. The Petitioner submitted a religious worker petition with a job title as a "maintenance operator" with a description of duties solely relating to maintenance and support of the church property. Only upon receiving the RFE, the Petitioner proposed a new set of ministerial duties for the Beneficiary including "preaching and teaching," "ministry to the sick," and "Bible study" previously not mentioned in the original petition. This constitutes an impermissible material change made in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Assoc. Comm'r 1998) (noting that USCIS "cannot consider facts that come into being only subsequent of the filing of a petition"); see also *Kungys v. United States*, 485 U.S. 759, 770-72 (1988) (explaining that a change in fact is material if the changed circumstances would have a natural tendency to influence or are predictably capable of affecting the decision). Accordingly, we will not consider the new ministerial duties within these proceedings.

The Petitioner also asserts that the Beneficiary's position qualifies as a religious occupation because anyone training to work in the ministry also works in "property management, building maintenance or administration" at the Petitioner's church. The Petitioner then quotes from the Bible to illustrate how individuals are called to serve in various roles, including "Helpers" or "Administrators." The Petitioner may freely choose its religious worker's job title or duties within a religious organization; however, determining whether the religious worker is qualified to receive benefits under the U.S. immigration laws rests with the U.S. Citizenship and Immigration Services (USCIS). Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

Furthermore, the regulation at 8 C.F.R. § 214(r)(3) states that religious study or training for religious work do not constitute a religious occupation. Religious training is allowed only when it is "incident to status," meaning while an individual is working in a religious occupation, he or she may participate in studies or training related to the religious work. Here, the Petitioner has not met the threshold requirement of showing that the Beneficiary's duties qualify as a religious occupation. Therefore, we find that even if the Beneficiary pursues religious training while performing duties of a maintenance operator, the Petitioner cannot qualify the Beneficiary as a religious worker under 8 C.F.R. § 214(r)(3).

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 record does not demonstrate that the proposed employment is in a religious occupation. See 8 C.F.R. § 214.2(r)(3). 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.