



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

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

MATTER OF P-C-K-D-S-

DATE: NOV. 4, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner, a temple, seeks to employ the Beneficiary as a special immigrant religious worker to perform services as a priest. *See* Immigration and Nationality Act (the Act) § 203(b)(4), 8 U.S.C. § 1153(b)(4). The Director, California Service Center, denied the petition, finding that the Petitioner did not establish that the Beneficiary had the requisite two years of qualifying religious work experience while in lawful immigration status. The matter is now before us on appeal. The appeal will be dismissed.

I. RELEVANT LAW AND REGULATIONS

Section 203(b)(4) of the Act, 8 U.S.C. § 1153(b)(4), provides 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), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before [December 11¹], 2015, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

¹ Continuing Appropriations Act, 2016, Pub. L. No. 114-53, §§ 106(3), 132, 129 Stat. 502 (2015) extended the applicable date of September 30, 2015, to December 11, 2015.

(III) before [December 11], 2015, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of [the Internal Revenue Code]) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m) states that in order to be eligible for classification as a special immigrant religious worker, the Beneficiary must:

(1) For at least the two years immediately preceding the filing of the petition have been a member of a religious denomination that has a bona fide non-profit religious organization in the United States.

(2) Be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position in one of the following occupations as they are defined in paragraph (m)(5) of this section:

(i) Solely in the vocation of a minister of that religious denomination;

(ii) A religious vocation either in a professional or nonprofessional capacity; or

(iii) A religious occupation either in a professional or nonprofessional capacity.

(3) 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.

(4) Have been working in one of the positions described in paragraph (m)(2) of this section, either abroad or in lawful immigration status in the United States, and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. . . .

The regulation at 8 C.F.R. § 204.5(m)(7) states, in pertinent part, that the prospective employer must specifically attest to the following:

(vi) The title of the position offered to the alien, the complete package of salaried or non-salaried compensation being offered, and a detailed description of the alien's proposed daily duties;

.....

(xi) That . . . any salaried or non-salaried compensation for the work will be paid to the alien by the attesting employer; and

(xii) That the prospective employer has the ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become public charges, and that funds to pay the alien's compensation do not include any monies obtained from the alien, excluding reasonable donations or tithing to the religious organization.

The regulation at 8 C.F.R. § 204.5(m)(10) states:

Evidence relating to compensation. Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS [U.S. Citizenship and Immigration Services]. If IRS [Internal Revenue Service] documentation, such as IRS Form W-2 [Wage and Tax Statement] or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

The regulation at 8 C.F.R. § 204.5(m)(11) provides:

Evidence relating to the alien's prior employment. Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work, must have occurred after the age of 14, and if acquired in the United States, must have been authorized under United States immigration law. If the alien was employed in the United States during the two years immediately preceding the filing of the application and:

(i) Received salaried compensation, the petitioner must submit IRS documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of income tax returns.

(ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.

(iii) Received no salary but provided for his or her own support, and provided support for any dependents, the petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS. . . .

However, on April 7, 2015, the Court of Appeals for the Third Circuit held that the lawful immigration status requirement in 8 C.F.R. 204.5(m)(4) and (11) is *ultra vires* and impermissibly conflicts with section 245(k) of the Act with respect to adjustment of status. See *Shalom Pentecostal Church v. U.S. Dep't of Homeland Sec.*, 783 F.3d 156, 165-67 (3d Cir. 2015). In accordance with this decision, USCIS will no longer deny special immigrant religious worker petitions based on the lawful status requirements at 8 C.F.R. 204.5(m)(4) and (11) in the Third Circuit. As a result of this decision and other district court cases,² USCIS implemented a policy to apply the *Shalom Pentecostal Church* decision nationally, pending the issuance of amended regulations that will remove the lawful status requirements in 8 C.F.R. 204.5(m)(4) and (11). See USCIS Policy Memorandum PM-602-0119, *Qualifying U.S. Work Experience for Special Immigrant Religious Workers* 1-2 (July 5, 2015), http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2015/2015-0705_Lawful_Status_PM_Effective.pdf. Accordingly, USCIS no longer requires that the qualifying religious work experience for the two-year period preceding the submission of a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, be in lawful immigration status.

II. PERTINENT FACTS AND PROCEDURAL HISTORY

On April 4, 2013, the Petitioner filed a Form I-360 seeking to employ the Beneficiary as a pastor. It indicated that it would compensate the Beneficiary \$800 per month and provide room, board, utilities, phone costs, and other necessities. In support of its petition, the petitioning organization submitted evidence of the Beneficiary's status as an R-1 nonimmigrant, with authorization to work for the petitioning organization from February 5, 2013, until November 20, 2013. It also submitted, among other things: copies of its bank account statements; copies of checks; statements showing its credits and debits; copies of telephone and utility bills; and a copy of the Beneficiary's 2011 tax return. The Director issued a request for evidence (RFE) stating that it appeared the Beneficiary worked for the petitioning organization prior to obtaining USCIS approval. In response to the RFE, the Petitioner asserted that the Beneficiary served as a volunteer beginning in February of 2011 and was not compensated until February of 2013, after the petition was approved. The Petitioner submitted additional evidence, including, but not limited to, letters from the temple's secretary and additional tax documents.

The Director found that the Beneficiary worked for the petitioning organization prior to USCIS approval and noted that there were discrepancies in the record that called into question the reliability and sufficiency of the evidence. The Director concluded that the Beneficiary did not have the requisite two years of continuous religious work experience in lawful immigration status and denied the petition accordingly. On appeal, the Petitioner submits a brief and additional evidence, asserting that it was "defrauded" by an immigration consultant whom it thought was an attorney.

While the appeal was pending, as noted above, USCIS issued a Policy Memorandum to the effect that we will no longer require that the two-year work experience requirement be in lawful immigration

² See *Congregation of the Passion v. Johnson*, 2015 WL 518284 (N.D. Ill. Feb. 6, 2015); *Shia Ass'n of Bay Area v. United States*, 849 F.Supp.2d 916 (N.D. Cal. 2012).

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status. See USCIS Policy Memorandum PM-602-0119, *supra*, at 1-2. Therefore, on August 21, 2015, we issued an RFE to the Petitioner, with a copy to counsel of record, providing the Petitioner with an opportunity to address inconsistencies in the record. In response to our RFE, we received a letter from counsel stating that she no longer represents the Petitioner and that the organization was now represented by different counsel. Counsel also stated that she attempted to contact the Petitioner, the Beneficiary, and the petitioning organization's new attorney, but received no response. We have received no additional documentation in response to our RFE. We therefore review the matter on the record before us.

III. ANALYSIS

We conduct appellate review on a *de novo* basis. See *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989). As explained below, we find that the Petitioner has not established that the Beneficiary met the two-year religious work experience requirement. Beyond the Director's decision, we also find that the Petitioner has not established its intent and ability to compensate the Beneficiary as claimed.

A. Two-Year Religious Work Experience

The record contains unexplained inconsistencies regarding the Beneficiary's religious work experience during the two years immediately preceding the date the petition was filed (i.e., April 4, 2011, until April 4, 2013). A letter from the temple's secretary, [REDACTED] submitted in response to the Director's RFE, asserted that the Beneficiary had been working at the petitioning organization since February of 2011, but only started receiving compensation after his R-1 petition was approved in February of 2013. To support this claim, [REDACTED] referenced the Beneficiary's "tax return[s] for 2011 AND 2012 where in the compensation received under salary is shown as zero." He further stated that almost 70% of the work at the temple is performed by volunteers. In a separate letter, [REDACTED] stated that in addition to compensation since February of 2013, the Beneficiary also receives free room and board.

However, on appeal, the Petitioner now claims that it was misled by an immigration consultant who erroneously claimed the Beneficiary had been a volunteer for the petitioning organization. The Petitioner submits a letter from the temple's director, [REDACTED], stating that "[m]any of the documents [previously submitted to the Director] contained errors or statements that were not accurate." [REDACTED] asserts that the Beneficiary applied to work at the temple in February of 2011 and began working at the temple in April of 2011. Similarly, the Beneficiary submits a declaration on appeal, stating that "[m]any of the documents [submitted below] contained errors or statements that were not accurate about dates and the nature of [his] work." According to both [REDACTED] and the Beneficiary, the Beneficiary was not a volunteer, but has always been compensated \$700 per month, plus housing, food, utilities, and transportation.³ The Petitioner submits two copies

³ We note that the record also includes several letters from other temples asserting that the Beneficiary worked as a

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of the Beneficiary's IRS Form 1099-MISC, Miscellaneous Income, showing that the Petitioner paid the Beneficiary \$5,415 and \$8,400 in nonemployee compensation in 2011 and 2012, respectively.

Even assuming the petitioning organization was misled into claiming that the Beneficiary had been a volunteer, the record nonetheless contains unexplained inconsistencies that cast doubt on his prior work experience. On the Petition for a Nonimmigrant Worker, Form I-129, the Petitioner stated that it would compensate the Beneficiary \$9,600 per year (the equivalent of \$800 per month). However, on appeal, [REDACTED] and the Beneficiary state that the petitioning organization has "always" paid the Beneficiary \$700 per month since he began work in April of 2011, less than claimed on the Form I-129.

In addition, there is no evidence that the Forms 1099-MISC in the record were filed with the IRS, or that the Petitioner provided the Beneficiary with housing, food, utilities, and transportation as claimed. Although [REDACTED] initial letter, dated March 1, 2013, referred to the Beneficiary's living accommodations as an apartment, the record does not provide any details regarding this apartment. The record consists of copies of three telephone bills, one electric bill, and checks the petitioning organization issued to pay its bills. The record also includes a printout of the petitioning organization's credits and debits for three months in 2012. However, none of these documents indicate or specify that these bills or payments were related to paying for the Beneficiary's apartment or living expenses.

Moreover, although the Beneficiary's 2012 Form 1099-MISC shows that the petitioning organization paid him \$8,400 in nonemployee compensation, he reported only \$6,650 on his Schedule C. Similarly, the Beneficiary's 2011 Form 1099-MISC shows only \$5,415 in nonemployee compensation and he reported \$5,600 on his Schedule C. It is unclear why these numbers are inconsistent.

The Act places the burden of proving eligibility for entry or admission to the United States on the Petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Furthermore, it is incumbent upon the Petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Id.* Considering the record in its entirety, the Petitioner has not established by a preponderance of the evidence that the Beneficiary performed continuous, qualifying religious work during the two years immediately preceding the filing of the petition.

priest. However, these letters indicate dates that are outside of the relevant two-year time period. The only letter that falls within the two-year time period is a letter from [REDACTED] California, dated May 13, 2012, stating that the Beneficiary preached at its temple "on various occasions throughout the last two years."

B. Compensation

Beyond the Director's decision, we find that the record does not establish the Petitioner's ability and intent to compensate the Beneficiary \$800 per month plus living expenses, as claimed. As discussed above, the record contains inconsistent financial documentation and does not show that the petitioning organization provided the Beneficiary with housing and living expenses as it claimed it would. In addition, although the petitioning organization submitted documents in support of its appeal in February of 2014, there are no financial documents in the record for 2013. The most recent bank account statement from the petitioning organization is from November of 2012, which was submitted with the initial petition. Rather than current bank account statements, the petitioning organization submits bank account statements from 2011 with its appeal. With respect to the Petitioner's printouts of its credits and debits, these documents are unverifiable and unaudited, and, in any event, the most recent printout is dated November of 2012. On appeal, the Petitioner submits printouts from 2011.

Therefore, the evidence does not show that the Petitioner paid the Beneficiary \$700 per month plus housing, food, utilities, and transportation in the past, as claimed. We find that the preponderance of the evidence does not establish the petitioning organization's ability and intent to compensate the Beneficiary \$800 per month, plus accommodations and living expenses, as it claims.

IV. CONCLUSION

The Petitioner has not established that the Beneficiary has the requisite two years of qualifying religious work experience or that it has the ability and intent to compensate the Beneficiary as claimed.

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of P-C-K-D-S-*, ID# 12455 (AAO Nov. 4, 2015)