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

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

MATTER OF I-O-A-, INC.

DATE: NOV. 23, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an [REDACTED] center, seeks to classify the Beneficiary as a special immigrant religious worker to perform services as a Brahmana. *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. 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 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 September 30, 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
 - (III) before September 30, 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 of 1986) 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).¹

The regulation at 8 C.F.R. § 103.2(b) provides in pertinent part:

If the petitioner or applicant fails to respond to a request for evidence or to a notice of intent to deny by the required date, the benefit request may be summarily denied as abandoned, denied based on the record, or denied for both reasons. If other requested material necessary to the processing and approval of a case, such as photographs, are not submitted by the required date, the application may be summarily denied as abandoned.

II. PERTINENT FACTS AND PROCEDURAL HISTORY

On October 2, 2012, the Petitioner filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. The classification the Petitioner seeks on behalf of the Beneficiary makes visas available to foreign national ministers and non-ministers in religious vocations and occupations seeking to immigrate to or adjust status in the United States for the purpose of performing religious work in a full-time compensated position. The Director issued a request for additional evidence (RFE), requesting information relating to whether the Beneficiary's employment in the United States was performed while in a lawful status.

The Director concluded that the Beneficiary's work in the United States was in violation of our immigration laws and that the Petitioner did not demonstrate that it complied with 8 C.F.R. § 204.5(m)(4) and (11). The Director denied the petition accordingly. On appeal, the Petitioner submitted a brief with additional documentation. On August 3, 2015, we issued an RFE requesting information relating to how the Petitioner intends to compensate the Beneficiary, and the Beneficiary's qualifications as a minister. We afforded the Petitioner 87 days in which to reply; however, more than 100 days have passed and we have not received a response. Consequently, we may summarily dismiss the appeal as abandoned, on the record, or for both reasons. *See* 8 C.F.R. § 103.2(b)(13). We will dismiss on both of these bases.

III. ANALYSIS

A. Experience Gained While in a Lawful Immigration Status

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

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.

(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)(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. . . .

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

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Experience for Special Immigrant Religious Workers (July 5, 2015), http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2015/2015-0705_Lawful_Status_PM_Effective.pdf [hereinafter July 5, 2015, Policy Memorandum]. Accordingly, USCIS no longer requires that the qualifying religious work experience for the two-year period preceding the submission of a Form I-360 be in lawful immigration status.

On June 12, 2013, the Director denied the petition based solely on the basis that the Beneficiary did not attain the qualifying religious work experience while in a lawful status in the United States. As USCIS no longer requires that the qualifying religious work experience for the two-year period preceding the submission of a Form I-360 be in lawful immigration status, this sole issue within the Director's denial is withdrawn.

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). For the reasons outlined below, a review of the record does not demonstrate the Beneficiary's eligibility.

B. Evidence Relating to the Qualifications of a Minister

At issue is the documentation the Petitioner offered as evidence of the Beneficiary's ordination within [REDACTED]. The regulation at 8 C.F.R. § 204.5(m)(9) provides the evidentiary requirements relating to ministers:

Evidence relating to the qualifications of a minister. If the alien is a minister, the petitioner must submit the following:

- (i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and
- (ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological institution is accredited by the denomination, or
- (iii) For denominations that do not require a prescribed theological education, evidence of:
 - (A) The denomination's requirements for ordination to minister;
 - (B) The duties allowed to be performed by virtue of ordination;

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(C) The denomination's levels of ordination, if any; and

(D) The alien's completion of the denomination's requirements for ordination.

Within the initial filing statement, the Petitioner indicated that the Beneficiary completed the ordination course and was ordained as a religious minister on March 11, 1996. The Petitioner affirmed that [REDACTED] utilizes the title of Brahmana as the equivalent of a minister. As evidence of the Beneficiary's ordination, the Petitioner submitted a typed letter dated March 20, 2006. The letter is addressed to the American Consulate General in [REDACTED], India and the closing reflects the author to be [REDACTED]. The letter is not signed, nor does it reflect the author's title. The record does not contain confirmation from [REDACTED] establishing the form of documentation it requires for ordination within the religion. Unsigned letters from individuals within [REDACTED] are not probative.

Also at issue is whether the Petitioner showed [REDACTED] documentary requirements for the Beneficiary's qualifications as a minister in the religious denomination pursuant to 8 C.F.R. § 204.5(m)(9)(ii). The Petitioner indicated within the initial filing brief that no public education is required to become the equivalent of a minister within [REDACTED]. Rather, the Petitioner affirmed that [REDACTED] requires prospective ministers to have a religious education followed by the ordination or initiation process. The Petitioner explained that it is during the initiation process in which one is trained under a spiritual master for religious services, which may encompass one to five years. The record does not contain evidence to corroborate the Petitioner's assertions within the initial filing statement.

Going on record without supporting documentation is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). In our August 2015 RFE, we requested evidence of both the Beneficiary's ordination and [REDACTED] requirements for ordination. The Petitioner did not respond and, therefore, has not sufficiently complied with 8 C.F.R. § 204.5(m)(9)(i) and (iii).

D. Compensation

The regulation at 8 C.F.R. § 204.5(m)(10) provides the initial requirements relating to the Petitioner's intent to compensate the Beneficiary stating:

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. If IRS documentation, such as IRS Form W-2 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.

Within the petition, the Petitioner indicated that the Beneficiary will receive a small cash allowance for personal expenses, and that it would provide the Beneficiary's room and board. The record consists of unaudited financial statements, which are not probative of the Petitioner's intent to compensate the Beneficiary. We requested information relating to salaried or non-salaried compensation, and documentation from the Internal Revenue Service or an explanation of its absence within our RFE, but the Petitioner did not respond to our request. As the Petitioner has not offered evidence that is required by the regulation, it has not met the regulatory requirements relating to compensation.

IV. CONCLUSION

The Petitioner did not respond to our RFE, and has consequently abandoned the appeal. Further, the Petitioner has not offered probative evidence of the Beneficiary's ordination, established the denomination accepts the Beneficiary's qualifications as a minister, or provided the required documentation of how it intends to compensate the Beneficiary.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of I-O-A-, Inc.*, ID# 12445 (AAO Nov. 23, 2015)