



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

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

MATTER OF M-T- INC.

DATE: SEPT. 24, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a church, seeks to employ the Beneficiary as a special immigrant religious worker to perform services as an Associate Pastor/Children's Ministry Director. See section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4). The Director, California Service Center, denied the petition and a subsequent motion, 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. We dismissed the appeal. We are reopening the matter on our own motion and will uphold our previous decision.

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 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]) 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 prior religious work need not correspond precisely to the type of work to be performed. A break in the continuity of the work during the preceding two years will not affect eligibility so long as:

(i) The alien was still employed as a religious worker;

(ii) The break did not exceed two years; and

(iii) The nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

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

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other district court cases,<sup>1</sup> 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](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 be in lawful immigration status.

## II. PERTINENT FACTS AND PROCEDURAL HISTORY

On May 10, 2013, the Petitioner filed a Form I-360 seeking to employ the Beneficiary as an Associate Pastor/Children's Ministry Director. [REDACTED] the church's Presiding Bishop, submitted a statement with the petition, indicating that the Beneficiary has been performing the duties of the proffered position since October 2010. The Director issued a request for evidence (RFE), requesting, among other things, documentation of the Beneficiary's religious work experience during the two-year period immediately preceding the filing of the petition. The Director noted that although it appeared the Beneficiary was given employment authorization twice, there was a gap in employment authorization from January 29, 2013, until March 28, 2013.

In response to the RFE, the Petitioner submitted additional evidence, including tax documents and an affidavit from the Beneficiary. The Beneficiary stated in her affidavit that from January 30, 2013, to March 27, 2013, while her work authorization was in the process of being renewed, she "continued as Assistant Pastor but was not on the payroll." She claimed that during this time, her husband financially supported her and she also worked part-time. She indicated she "trad[ed] apparel goods with Nigerian friends and acquaintances who were living temporarily in the US [for] commission[]." She also stated she worked part time as a substitute teacher with [REDACTED] teaching children in religious studies. Furthermore, the Petitioner stated that the Beneficiary had worked at other parishes and was compensated for her services at these other parishes.

The Director denied the petition, concluding that the Beneficiary did not have the requisite two years of continuous religious work experience in lawful immigration status. Citing 8 C.F.R. § 204.5(m)(4)(i), (ii), and (iii), the Director also found that the evidence did not demonstrate that any break in the continuity of work was for religious training or for sabbatical that did not involve unauthorized work in the United States.

The Petitioner filed a motion to reopen and reconsider with the Director, contending that during the seven-week time period from January 30, 2013, until March 27, 2013, the Beneficiary "continued to serve the church as before but without any remuneration until March 27, 2013, when her [employment authorization] was renewed." According to the Petitioner, she was financially supported by her

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<sup>1</sup> 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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husband during this time, as permitted by 8 C.F.R. § 204.5(m)(11)(iii).<sup>2</sup> The Petitioner also claimed that the Beneficiary's seven-week break met the requirements of 8 C.F.R. § 204.5(m)(4), noting that the Beneficiary had an A-1 visa.

The Director found that the Petitioner did not address how the Beneficiary's break in the continuity of work requirement was for further religious training or for sabbatical that did not involve unauthorized work. In addition, the Director stated that the Beneficiary's A-1 status did not authorize her employment with the petitioning organization. The Director denied the Petitioner's subsequent motion, concluding that the Petitioner did not state any new facts that were supported by affidavits or other documentary evidence, and did not state reasons for reconsideration that were supported by precedent decisions.

On appeal, the Petitioner asserted that the Beneficiary met the two-year work experience requirement because during the seven-week time period in question, she was volunteering and was supported by her husband, pursuant to 8 C.F.R. § 204.5(m)(11)(iii).<sup>3</sup> At the same time, citing C.F.R. § 204.5(m)(4), the Petitioner claimed that the Beneficiary was furthering her religious training and schooling during the seven-week time period. The Petitioner submitted a supplemental affidavit from the Beneficiary and other documents in support of its appeal.

On October 10, 2014, we affirmed the Director's determination that the Petitioner did not establish the Beneficiary met the required two years of continuous, qualifying work experience immediately preceding the filing date of the petitioner. We found that there was no evidence that the Petitioner paid the Beneficiary any income from January 2013 to May 10, 2013, when the petition was filed. Quoting the Federal Register, we explained that the Beneficiary's time spent volunteering during part of the two-year time period preceding the filing of the petition was disqualifying. We clarified that, as evidence of prior employment, only religious workers who work in an established missionary program under either an R-1 or B-1 nonimmigrant visa may rely on self-support and found that, in this case, there was no evidence the Beneficiary was in a missionary program. Regarding the Petitioner's assertion that she was furthering her religious training during the seven-week time period she did not have work authorization, we determined that the evidence submitted consisted of only ninety minutes of field experience which did not indicate it was related to religious training. We dismissed the appeal accordingly.

On January 9, 2015, the Petitioner filed a complaint in the U.S. District Court for the [REDACTED] of New York seeking declaratory and injunctive relief. Among other things, the Petitioner asserted that our decision was biased and arbitrary. On July 5, 2015, 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 status. *See* USCIS Policy Memorandum PM-602-0119, *supra*, at 1-2.

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<sup>2</sup> The Petitioner cites to "8 C.F.R. 204.5(m)(ii)" throughout its briefs on motion and on appeal. We note that there is no such regulation, but rather, the Petitioner is referring to 8 C.F.R. § 204.5(m)(11)(iii).

<sup>3</sup> *See supra*, n.2.

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On July 24, 2015, we reopened the matter on our own motion pursuant to 8 C.F.R. § 103.5(a)(5)(ii) and provided the Petitioner with the opportunity to submit additional evidence. The Petitioner responded to our letter with a statement from counsel and two new bank statements.

### 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.

The record continues to contain unexplained inconsistencies regarding the Beneficiary's religious work experience during the two years immediately preceding the date the petition was filed. The Petitioner initially claimed that the Beneficiary had been performing the duties of the proffered position since October 2010. In response to the Director's RFE, the Petitioner stated that during the seven-week time period that the Beneficiary did not have employment authorization, she continued to work at the church, but was taken off of the church's payroll. The Petitioner added that the Beneficiary had worked at other parishes and was compensated for her services at these other parishes. On appeal, the Petitioner asserted that although the Beneficiary continued to work as an Assistant Pastor during the seven-week time period in question, she was also taking college workshop courses to further her religious training. Currently, before the U.S. District Court for the [REDACTED] of New York, the Petitioner states in its Complaint that during the seven-week time period in question, the Beneficiary did not work as a Pastor.

In our letter reopening the matter, we discussed the contradictory information in the record that casts doubt on the Petitioner's claims. Among other things, we asked for clarification regarding whether the Beneficiary was continuously employed as a religious worker during the two years immediately preceding the date the petition was filed or whether the Beneficiary was on a qualifying break that would not interrupt the two-year work experience requirement. We explained that qualifying religious work is not limited to the petitioning organization and noted that in response to the RFE, the Petitioner claimed the Beneficiary had worked in various parishes and had been compensated for her services each time. However, we specified that there was no evidence in the record that the Beneficiary received any income from any organization between January of 2013 and May 10, 2013, when the petition was filed. Therefore, pursuant to 8 C.F.R. § 204.5(m)(11)(i), we requested any additional evidence of the Beneficiary's work experience, such as financial documentation to show that the Beneficiary received a salary, for the five month period before the petition was filed.

The Petitioner's response to our letter reopening the matter does not sufficiently address the inconsistencies in the record. The Petitioner does not acknowledge or explain its evolving explanations of how the Beneficiary spent her time between January and May of 2013. It remains unclear whether the Petitioner is asserting that the Beneficiary worked continuously for the two-year period before the petition was filed, or whether it is asserting the Beneficiary qualifies for a break in the continuity of

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work experience requirement. The record, as it currently stands, does not establish the extent to which the Beneficiary worked for the petitioning organization and/or a different church during this five-month time period and whether or not she was paid by the petitioning organization or another church during this time. Because the record is unclear regarding whether she “was still employed as a religious worker” during this time, the Petitioner has not shown that the Beneficiary qualifies for a break in the continuity of the work, regardless of whether it was to further religious training or for sabbatical. *See* 8 C.F.R. §§ 204.5(m)(4)(i), (iii).

Although we requested tax documentation for 2013, the Petitioner has not submitted any evidence that the Beneficiary was compensated at any time during the first five months of the year the petition was filed. The petitioning organization has not provided an explanation for not providing this IRS documentation, as required under 8 C.F.R. § 204.5(m)(10). Although we specifically stated that evidence such as affidavits, letters by previous and current employers, church programs/bulletins, photographs of events, etc., would assist us in evaluating whether the Beneficiary met the two-year work experience requirement, the Petitioner did not submit any evidence except for two bank account statements of the Beneficiary’s husband. To the extent the Beneficiary stated that she taught children religious studies, there is no evidence to show that her substitute teaching constituted a religious occupation as defined in 8 C.F.R. § 204.5(m)(5). There is no documentation from [REDACTED] discussing the Beneficiary’s prior work as a substitute teacher, and the Beneficiary does not provide any details regarding her job duties.

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 qualifying religious work during the two years immediately preceding the filing of the petition as required by section 203(b)(4)(iii) of the Act and 8 C.F.R. § 204.5(m)(4).

#### IV. CONCLUSION

The Petitioner has not established that the Beneficiary has the requisite two years of qualifying religious work experience.

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. at 128. Here, that burden has not been met.

**ORDER:** We affirm our prior decision dated October 10, 2014. The petition remains denied.

Cite as *Matter of M-T- Inc.*, ID# 15088 (AAO Sept. 24, 2015)