



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

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

MATTER OF C-O-T-W-A-O-G-

DATE: AUG. 19, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an Assemblies of God church, seeks to classify the Beneficiary as a special immigrant religious worker to perform services as a pastor. *See* Immigration and Nationality Act (the Act) section 203(b)(4), 8 U.S.C. § 1153(b)(4). This immigrant classification allows non-profit religious organizations, or their affiliates, to employ foreign nationals as ministers, in religious vocations, or in other religious occupations in the United States.

The California Service Center Director denied the petition. In the denial, the Director concluded that the Petitioner did not demonstrate:

1. The Beneficiary was continuously performing qualifying religious work during the relevant two-year period before the Petitioner filed the petition;
2. The Beneficiary was a member of the petitioning organization or the same type of religious denomination during the relevant two-year period;
3. The offered position would consist of full-time work comprised of at least 35 hours per week; and
4. The Beneficiary possessed the qualifications required for the offered position.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and indicates it believes the record now establishes the Beneficiary's eligibility. Due to our concerns regarding the Director's request for evidence (RFE)<sup>1</sup> and because we noted additional deficiencies in the record, we issued an RFE on April 21, 2016, affording the Petitioner an opportunity to supplement the record. The Petitioner did not provide a response.

Upon *de novo* review, we will dismiss the appeal.

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<sup>1</sup> The denial misstated the date of the Director's RFE and mischaracterized the evidence requested.

## I. LAW

Non-profit religious organizations may petition for foreign nationals to immigrate to the United States to perform full-time, compensated religious work as ministers, in religious vocations, or in other religious occupations. The petitioning organizations must establish that the foreign national beneficiary meets certain eligibility criteria, including membership in a religious denomination and continuous religious work experience for at least the two-year period before the petition filing date. Foreign nationals may self-petition for this classification. *See generally* section 203(b)(4) of the Act (providing 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)).

The implementing regulation at 8 C.F.R. § 204.5(m) provides that in order to be eligible for classification as a special immigrant religious worker, a foreign national 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 . . . after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition.

## II. ANALYSIS

The issues within this appeal relate to the Beneficiary's qualifying experience during the two-year period before the petition filing, his membership, the full-time nature of the position, the position requirements, and compensation. In denying the petition, the Director determined the record lacked evidence pertaining to several regulatory requirements. For the reasons discussed below, we agree that the Petitioner has not offered sufficient evidence to demonstrate eligibility.

A. Qualifying Prior Experience

The regulations require a petitioner to demonstrate that the beneficiary was engaged in continuous, qualifying religious work during the two years immediately preceding the petition filing date. The regulation at 8 C.F.R. § 204.5(m)(4) provides in part that the beneficiary must:

Have been working in one of the positions described in paragraph (m)(2) of this section . . . 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)(11) provides the documentary requirements to verify a beneficiary's qualifying experience:

*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 . . . . 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 [Internal Revenue Service] documentation that the alien received a salary, such as an IRS Form W-2 [Wage and Tax Statement] 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

*Matter of C-O-T-W-A-O-G-*

statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS.

If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

The relevant two-year period relating to the Beneficiary's qualifying service is December 9, 2012, through December 8, 2014. Within the Employer Attestation portion of the petition, the Petitioner affirmed that the Beneficiary served as an associate pastor, head of evangelism and small groups, from 2009 until the date it filed the petition in 2014. The Petitioner's undated statement submitted in response to the Director's RFE also indicated that the Beneficiary had been serving the petitioning church since his arrival in the United States in 2009. However, the record does not contain the types of documentation required under 8 C.F.R. § 204.5(m)(11)(1)-(3) pertaining to the Beneficiary's prior employment during the relevant two-year period. The Petitioner's statements of the dates it employed the Beneficiary are not supported by probative evidence, and are therefore insufficient to meet its burden of proof. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The submitted evidence relating to the Beneficiary's prior employment consists of state and federal individual tax returns the Beneficiary filed for 2010 and 2011. Such evidence is not pertinent as it does not relate to the relevant qualifying period. The Petitioner also offers an October 2015 letter from [REDACTED] who affirmed that he has provided housing support/accommodation to the Beneficiary and his family since 2009. This letter does not conform to the types of evidence required by the regulation. Accordingly the Petitioner has not documented that the Beneficiary possessed two years of prior experience immediately before it filed the petition in accordance with 8 C.F.R. § 204.5(m)(11).

B. Membership

The regulation at 8 C.F.R. § 204.5(m)(1) requires a petitioner to establish the beneficiary's membership in a religious denomination that has a bona fide non-profit religious organization in the United States during the two years immediately preceding the filing of the petition. The regulation at 8 C.F.R. § 204.5(m)(5) provides the following definition:

*Denominational membership* means membership during at least the two-year period immediately preceding the filing date of the petition, in the same type of religious denomination as the United States religious organization where the alien will work.

The Petitioner belongs to the Assemblies of God denomination and it indicated the Beneficiary was a member during the two years immediately before it filed the petition. In the proceedings before the Director, the Petitioner did not offer documentation to support its statements. The Director determined that the Petitioner's statements were not sufficient and denied the petition based in part on that finding. On appeal, the Petitioner offers documentation that meets its burden of proof,

including a copy of the Beneficiary's Assemblies of God membership card predating the relevant two-year period. We therefore withdraw the Director's adverse determination as it relates to the regulation at 8 C.F.R. § 204.5(m)(1).

#### C. Full-time Position

The regulation at 8 C.F.R. § 204.5(m)(2) provides that, in order to be eligible for classification as a special immigrant religious worker, a beneficiary must:

- (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.

The Director found the record was not sufficient to demonstrate the Beneficiary would be working in a full-time position. On appeal, the Petitioner submits a detailed schedule of the Beneficiary's duties that shows the position will require him to work at least an average of 35 hours per week. As a result, we withdraw the Director's determination on this issue.

#### D. Qualifications of a Minister

As a final ground for denial, the Director found that the Petitioner had not documented the qualifications for the offered position, or established that the Beneficiary met any such requirements. The regulation at 8 C.F.R. § 204.5(m)(9) provides:

*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

(b)(6)

*Matter of C-O-T-W-A-O-G-*

- (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;
  - (C) The denomination's levels of ordination, if any; and
  - (D) The alien's completion of the denomination's requirements for ordination.

Within the Employer Attestation portion of the petition, the Petitioner listed the Beneficiary's qualifications as his associate pastor service from 2009 until the petition filing date, an associate degree in theology, and his service as an associate pastor with [REDACTED] in the Philippines. Relating to the Beneficiary's ordination, the Petitioner submitted (1) a Certificate of Ordination dated August 30, 2005, from the [REDACTED] Philippines; and (2) a Certificate of Ordination dated August 23, 2009, from the petitioning organization.

On appeal, a letter from the Petitioner's senior pastor explains that the church is a sovereign church under the General Council of the Assemblies of God, and as a sovereign church they can issue credentials to anyone they determine meets the standard of their local church for credentialing. The evidence on appeal also includes a letter from the Secretary/Treasurer of the [REDACTED] who indicates the Beneficiary holds a ministry credential granted by the Petitioner, and that it is valid according to the constitution and bylaws of the General Council of the Assemblies of God. Further, the Petitioner offers a Local Church Credential Certification, reflecting that the Petitioner's Board of Deacons (Trustees or Elders) affirms that it will issue local church credentials consistent with the guidelines given by the General Council and the [REDACTED]

We find the evidence of record sufficient to establish that the Beneficiary is qualified to serve as a minister according to the requirements of the Petitioner's denomination. We will therefore withdraw the Director's findings on this issue.

#### E. Compensation

Although not raised by the Director, we find the Petitioner has not met the regulatory requirements to establish how it intends to compensate the Beneficiary. The regulation at 8 C.F.R. § 204.5(m)(10) provides the initial requirements relating to compensation, 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.

First, the record includes inconsistencies regarding the form and amount of intended compensation. The Employer Attestation portion of the petition describes the offered compensation as “Proposed Salary - \$2,500.00.” The Petitioner also submitted a letter dated October 27, 2014, which indicated it would pay the Beneficiary a monthly salary and housing allowance of \$2,250. We afforded the Petitioner an opportunity to clarify the Beneficiary’s compensation package, but it did not offer a response. 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).

Second, the record does not contain the Petitioner’s filings with the IRS, nor did it offer an explanation for their absence. The record also lacks comparable and verifiable evidence of how it intends to provide the proffered compensation. The Petitioner previously supplied bank statements covering a two month period, but this information is not sufficient to comprehensively represent the petitioning organization’s financial position. Consequently, the Petitioner has not established how it intends to compensate the Beneficiary as required by the regulation at 8 C.F.R. § 204.5(m)(10).

### III. CONCLUSION

For the reasons discussed above, the Petitioner has not established the Beneficiary’s qualifying experience or demonstrated 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. 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. Accordingly, we will dismiss the appeal.

**ORDER:** The appeal is dismissed.

Cite as *Matter of C-O-T-W-A-O-G-*, ID# 16169 (AAO Aug. 19, 2016)