U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF X-F-T-

DATE: FEB. 22, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a Buddhist temple, seeks to classify the Beneficiary as a special immigrant religious worker to perform services as a minister. *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 sustained.

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, 2016, 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, 2016, 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).

The regulation at 8 C.F.R. § 204.5(m)(5) defines a minister as an individual who:

> (A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct such religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
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> (B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
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> (C) Performs activities with a rational relationship to the religious calling of the minister; and
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> (D) Works solely as a minister in the United States, which may include administrative duties incidental to the duties of a minister.

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)(9) requires a petitioner to submit the following documentation if the alien will work as a minister:

> (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
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> (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;

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

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

II. PERTINENT FACTS AND PROCEDURAL HISTORY

On July 28, 2014, the Petitioner filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. The classification it 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 evidence (RFE), requesting items relating to compensation and about the proposed position. The Director expressed concerns over the Petitioner's staffing and the need to open a new temple. Based on these concerns, the Director determined that the Petitioner had not made a qualifying offer for the Beneficiary's services. The Director denied the petition accordingly. On appeal, the Petitioner submitted a brief and additional documentation. We issued an RFE on December 1, 2015, to afford the Petitioner the opportunity to address the compensation regulation at 8 C.F.R. § 204.5(m)(10) and the ministerial qualifications regulation at 8 C.F.R. § 204.5(m)(9), to which the Petitioner responded on February 1, 2016. For the reasons discussed below, the Petitioner has resolved the Director's concerns and sufficiently addressed the issues raised in our RFE.

III. ANALYSIS

1. Qualifying Job Offer

The Director concluded that the Petitioner's intent was to build an additional temple after USCIS approval and declined to find a qualifying offer of employment upon the Beneficiary's arrival in the United States. On appeal, the Petitioner explained that while it did indicate its intent to eventually open a second temple, it has renovated its current location and requires the Beneficiary's services because of an increase in the number of congregants it has already experienced.

2. Intent to Compensate

In our RFE, we noted that the Petitioner had not provided Internal Revenue Service (IRS) certified tax returns or other documents, or an explanation for their absence pursuant to the regulation at 8 C.F.R. § 204.5(m)(10). We also acknowledged that the Petitioner had indicated the Beneficiary

will only receive a living allowance and room and board. We requested an explanation of the annual amount of the living allowance the Beneficiary will receive and verification of room and board arrangements. In response, the Petitioner explains that it has no salaried workers and, as such, cannot provide IRS tax filings. The Petitioner submits a bank statement, a reviewed financial statement reflecting a considerable operating fund, and photographs of its dormitories. This documentation reflects the Petitioner's intent to compensate the Beneficiary.

3. Beneficiary's Qualifications

In our RFE we acknowledged that the Petitioner had supplied the Beneficiary's certificate of ordination, and requested evidence from the Buddhist denomination reflecting acceptance of the Beneficiary's qualifications as a minister in the religious denomination. In response, the Petitioner provides the Beneficiary's ordination certification, diploma, transcript, and employment verification as a minister from a Chinese temple. The Petitioner has demonstrated the Beneficiary's qualifications.

IV. CONCLUSION

For the reasons discussed above, the Petitioner has established eligibility. Accordingly we will sustain the appeal.

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 met that burden.

ORDER: The appeal is sustained.

Cite as *Matter of X-F-T-*, ID# 14660 (AAO Feb. 22, 2016)