



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

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

MATTER OF M-C-O-G-

DATE: JAN. 14, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a church, seeks to classify the Beneficiary as a special immigrant religious worker to perform services as a youth pastor. 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, 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).

II. PERTINENT FACTS AND PROCEDURAL HISTORY

On May 9, 2014, 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 two requests for additional evidence (RFE), seeking documents relating to the Beneficiary's membership in the religious denomination, the Beneficiary's compensation, the Petitioner and the nature of its activities, the position, and the Beneficiary's experience to qualify for the offered position.

The Director subsequently determined that the Petitioner did not establish how it intended to compensate the Beneficiary and that the Beneficiary has qualifying work experience within the meaning of section 101(a)(27)(C) of the Act. The Director cited to, and partly relied on, the regulation at 8 C.F.R. § 204.5(g)(2), which focuses on the ability to pay for other employment based immigrant petitions; however, the more appropriate regulation associated with compensating a foreign national religious worker is the regulation at 8 C.F.R. § 204.5(m)(10), which the Director also cited. On appeal, the Petitioner submits a statement with additional documents.

III. ANALYSIS

A. Compensation

1. Authority

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

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 [Internal Revenue Service (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.

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2. Analysis

Within the petition, the Petitioner did not specify a monetary salary that it would pay to the Beneficiary. The statement in the petition reflected the Petitioner would supply the Beneficiary and his family with room and board and all monetary needs corresponding with its capacity or availability for the first year. The Petitioner also indicated it would start with a weekly salary. The Petitioner did not initially include any corroboration of how it intended to compensate the Beneficiary. The Director twice requested the Petitioner submit evidence outlined in the regulation. In response to the RFEs, the Petitioner filed two letters dated August 14, 2014, and February 16, 2015, in which it stated it would offer the Beneficiary room and board and also supply for his needs according to the Petitioner's capacity or availability. The response also contained a letter dated February 16, 2015, from congregant [REDACTED] signifying she has made room and board available to the Beneficiary each year on his mission trips to New York. The Director subsequently determined that the record did not contain sufficient material showing how it intended to compensate the Beneficiary. On appeal, the Petitioner affirms that it "has an apartment on top" and that either the church or [REDACTED] will make arrangements for the Beneficiary's room and board. The Petitioner's appellate statement also references another congregant, [REDACTED] "who promises to support him while last [*sic*]." The Petitioner concludes: "The church will provide all necessary [*sic*] for him and family base[d] on our resources with \$300 a week as an offering." The Petitioner also files financial documents relating to [REDACTED] with the appeal.

The regulation at 8 C.F.R. § 204.5(m)(7)(xi) requires the Petitioner to attest that "any salaried or non-salaried compensation for the work will be paid to the alien by the attesting employer." Therefore, any ancillary forms of compensation that the employer is not directly supplying cannot be counted towards the Beneficiary's compensation. The Petitioner offered at least three possible providers of room and board for the Beneficiary, [REDACTED] and itself. Even if the Petitioner established by a preponderance of the evidence that it would furnish the Beneficiary's room and board, it did not document its ownership of or tenancy for the apartment it mentions in the appeal brief. Consequently, the Petitioner has not verified that it will be the entity that will bestow the Beneficiary and his family with room and board, and it has not met its burden of proof in demonstrating it intends to compensate the Beneficiary.

With respect to monetary consideration, the Petitioner provided only a single bank statement for the month of July 2014 as evidence of its own finances. The Petitioner did not include IRS documentation or explain its absence. A single bank statement does not constitute comparable verifiable corroboration of the Petitioner's intent to compensate the Beneficiary.

Further, the Petitioner listed the Beneficiary's wife and child on the petition and discusses the compensation being sufficient to sustain the Beneficiary and his family. The Petitioner has not complied with requirements contained in the Employer Attestation within the Form I-360, nor has it complied with the regulation at 8 C.F.R. § 204.5(m)(7)(xii), which requires the Petitioner to attest that the foreign national and his family members "will not become public charges." The \$300 weekly salary (which annualizes to \$15,600) is not sufficient to meet or exceed the poverty

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guidelines that U.S. Citizenship and Immigration Services utilizes to determine if a foreign national is likely to become a public charge (\$19,912.50 for a household size of two).¹ As weekly salary does not meet or exceed the poverty guidelines and the record does not contain evidence that the Petitioner is the one providing room either directly or by reimbursing [REDACTED] or [REDACTED] it has not meet its burden of proof with respect to how it intends to compensate the Beneficiary.

B. Work Experience Immediately Preceding the Petition Filing

1. Authority

The regulation at 8 C.F.R. § 204.5(m) provides in pertinent part:

To be eligible for classification as a special immigrant religious worker, the alien (either abroad or in the United States) 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.

....

(4) Have been working in one of the positions described in paragraph (m)(2) of this section . . . 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.

The regulation at 8 C.F.R § 204.5(m)(11) requires the following evidence to show the Beneficiary's prior employment during the previous two year period:

¹ Foreign nationals must meet the 125% rate of the poverty guidelines contained within the Form I-864P, 2015 U.S. Department of Health and Human Services (HHS) Poverty Guidelines for Affidavit of Support. According to the HHS website, <https://aspe.hhs.gov/poverty-guidelines>, the poverty guidelines for a household of two is \$15,930, and 125 percent of that amount is \$19,912.50. Website accessed January 11, 2016, and incorporated into the record of proceeding.

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- (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.

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

2. Analysis

Within her decision, the Director issued an adverse determination relating to this regulatory requirement stating: “[T]he [P]etitioner has failed to establish that the [B]eneficiary has been working continuously in the same type of work as the proffered position for the two-year period immediately preceding the filing of the petition.” As the regulation states that the prior religious work need not correspond precisely to the type of work to be performed, we withdraw the Director’s reasoning for her adverse decision on this issue.

However, as the Beneficiary has not worked for the Petitioner for the two-year period immediately preceding the filing of the petition, probative evidence of such work would be a letter from the church where the Beneficiary has been working during this period. Within the Petitioner’s February 16, 2015, letter, Pastor [REDACTED] indicated the Beneficiary has been serving Pastor [REDACTED] in Haiti. The record does not contain an experience letter from Pastor [REDACTED] reflecting the dates that the Beneficiary has served this church and duties he performed during his service. As such, the Petitioner has not submitted sufficient documentation to satisfy the regulation at 8 C.F.R. § 204.5(m)(4).

Additionally, as provided at 8 C.F.R. § 204.5(m)(11), if the Beneficiary was employed outside the United States during the two years, the Petitioner is required to corroborate the religious work the Beneficiary performed with items comparable to tax documentation or other verifiable evidence. While not raised by the Director, 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). The Petitioner did not offer any such material and, accordingly, has not complied with 8 C.F.R. § 204.5(m)(11).

C. Full Time Employment

1. Authority

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.

2. Analysis

Beyond the decision of the Director, the Petitioner also did not establish that the Beneficiary would work full-time. As noted above, we conduct appellate review on a *de novo* basis. *See Siddiqui*, 670 F.3d at 741; *Soltane*, 381 F.3d at 145; *Dor*, 891 F.2d at 1002 n. 9. On the Form I-360, the Petitioner answered yes that the “offered position is full time, requiring at least an average of 35 hours of work per week.” However, within two letters dated August 14, 2014, and February 16, 2015, the Petitioner indicated the total hours per week would be “about 31 hours.” Additionally, the Petitioner included a February 16, 2015, proposed weekly schedule of the Beneficiary’s duties reflecting the Beneficiary would be working for 25 hours per week. First, the Petitioner has not resolved the inconsistency as to whether the Beneficiary would work 25 or 31 hours with independent objective evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Regardless, even if we accepted the letters with the larger number of hours, 31 hours are still less than the required 35 hours for full-time employment.

IV. CONCLUSION

For the reasons discussed above, the Petitioner has not established: (1) how it intends to compensate the Beneficiary; (2) that the Beneficiary attained the qualifying experience during the two years immediately preceding the petition; and (3) that the Beneficiary will be coming to the United States to work in a full-time position.

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, that burden has not been met.

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ORDER: The appeal is dismissed.

Cite as *Matter of M-C-O-G-*, ID# 15126 (AAO Jan. 14, 2016)