



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

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

MATTER OF N-P-C-

DATE: JULY 25, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner is a church that seeks to employ the Beneficiary as a pastor. The special immigrant religious worker 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. *See* Immigration and Nationality Act (the Act) section 203(b)(4), 8 U.S.C. § 1153(b)(4).

The Director of the California Service Center denied the petition, concluding that the Petitioner did not establish that the Beneficiary had the required religious work experience for at least the two-year period immediately preceding the date the petition was filed.

The matter is now before us on appeal. According to the Petitioner, although the Beneficiary was a full-time student during the requisite two-year time period, he also volunteered as a pastor at the petitioning organization. The Petitioner argues that the Beneficiary's studies were in an effort to further his religious training and, therefore, it is a permitted break in the continuous work experience requirement. The Petitioner also contends that the Beneficiary already met the two-year religious work requirement when he served as a pastor for more than two years in South Korea, before entering the United States.

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

I. RELEVANT LAW AND REGULATIONS

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 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)(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:

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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. . . .¹

II. PERTINENT FACTS AND PROCEDURAL HISTORY

In support of the petition, the Petitioner submitted, among other things: letters from the church's administrator, [REDACTED] a letter from the [REDACTED]; an employment agreement; the Beneficiary's résumé; the Beneficiary's ordination certificate; a copy of the Beneficiary's visa, indicating he was admitted to the United States in December 2009 as a student in F-1 status; and several copies of Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status.

The Director issued a request for evidence (RFE) requesting, in part, additional documentation addressing the Beneficiary's work history. The Petitioner responded to the RFE, contending that the Beneficiary served as a pastor in South Korea for more than two years before he entered the United States in 2010 to attend [REDACTED]. According to the Petitioner, the Beneficiary continued to perform the duties of a minister while studying at the seminary and served as an associate pastor for the petitioning organization from January of 2013 to the present. It submitted documents including, but not limited to, a transcript and letters from the [REDACTED].

The Director denied the petition, concluding that the Petitioner did not establish that the Beneficiary worked continuously as a pastor for the two years immediately preceding the filing of the petition. The Director found that the Petitioner did not explain how the Beneficiary worked full time while also attending school full time. The Director also noted that the Petitioner did not provide a breakdown of

¹ U.S. Citizenship and Immigration Services (USCIS) no longer requires that the qualifying religious work experience for the two-year period, described in 8 C.F.R. § 204.5(m)(4) and (11), be in lawful immigration status. See USCIS Policy Memorandum PM-602-0119 *Qualifying U.S. Work Experience for Special Immigrant Religious Workers 2* (July 5, 2015), http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2015/2015-0705_Lawful_Status_PM_Effective.pdf (USCIS Policy Memorandum PM-602-0119).

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the Beneficiary's duties, specify the number of hours worked, or address whether any type of compensation was provided, as requested.

On appeal, the Petitioner explains that the Beneficiary was in a "non-residential" doctoral program in Missouri while also working at the petitioning organization in California. It contends that the Beneficiary already met the two-year religious work experience requirement because he worked full time as a pastor in South Korea before entering the United States in 2010. It further argues on appeal that, in any event, the doctoral program is in furtherance of the Beneficiary's religious training and, therefore, qualifies as a break in the continuous work requirement under 8 C.F.R. § 204.5(m)(4).

III. ANALYSIS

In this case, the petition was filed on May 6, 2015. Therefore, the Petitioner must establish that the Beneficiary has the requisite two years of qualifying work experience from May 6, 2013, until May 6, 2015. See section 203(b)(4)(iii) of the Act; 8 C.F.R. § 204.5(m)(4). The regulation at 8 C.F.R. § 204.5(m)(4) and (11) makes clear that the relevant two-year time period is "immediately preceding the filing of the petition" or "immediately preceding . . . any acceptable break in the continuity of the religious work." As explained below, we find that the Petitioner has not submitted sufficient documentation to establish this requirement.

A letter from [REDACTED] initially submitted with the petition indicated that the Beneficiary has served as an associate pastor for the petitioning organization from January of 2013 to the present. [REDACTED] statement did not provide any specific details of the Beneficiary's work experience. In the RFE, the Director requested, in part, "a breakdown of duties performed . . . for an average week. Include the specific dates of employment, specific job duties, number of hours worked per week, form and amount of compensation, and level of responsibility/supervision." However, in his response, [REDACTED] merely repeated the same contention and stated that the Beneficiary "has continued to perform the duties of a Christian minister while he studied at [REDACTED] and [REDACTED]." In addition to lacking any details regarding the Beneficiary's reported work experience, the Petitioner has not discussed or submitted documentation addressing whether it provided any non-salaried compensation to the Beneficiary, such as room and board, or whether the Beneficiary provided for his own support. Therefore, the Petitioner has not sufficiently provided evidence of the Beneficiary's prior employment under 8 C.F.R. § 204.5(m)(11)(ii) and (iii).

Moreover, documentation in the record from [REDACTED] and [REDACTED] shows that the Beneficiary was a student who was not authorized to work for the requisite two years. The record contains four different copies of Form I-20, certifying the Beneficiary's student status from 2009 to 2014. Only the Form I-20 that was signed on September 12, 2013, indicates that the Beneficiary was authorized for one year of employment, from August 12, 2013, until August 11, 2014. The other Forms I-20 make no such authorization.² The employment authorization card in

² For instance, the earliest Form I-20, signed by a [REDACTED] in 2009, 2010, and 2011, does not indicate any student employment authorization on page three of the form. Similarly, page three

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the record lists the same dates of authorization as August 12, 2013, until August 11, 2014. Therefore, [REDACTED] contention that the Beneficiary worked at the petitioning organization beginning in January of 2013 to the present is inconsistent with other documentation in the record that show he was a full-time student with authorization to work for only a portion of that time. In addition, the Beneficiary was only authorized to work for one year; the Form I-20 and the employment authorization card do not show that he actually worked during this year.³

Furthermore, the record is inconsistent regarding when the Beneficiary attended [REDACTED] located in [REDACTED] Missouri. The Petitioner claims, and the Beneficiary indicates on his résumé, that he attended [REDACTED] beginning in June of 2014. However, a letter from the seminary's Office of Doctoral Studies, dated April 27, 2015, states that the Beneficiary began taking classes in the spring of 2013. A subsequent letter signed by the same individual, dated September 4, 2015, asserts that the Beneficiary began taking classes in the fall of 2014. Another letter from the seminary, signed by the Dean of Asian Studies, indicates that the first course the Beneficiary took, called Doctoral Studies Colloquium, ran from December 26, 2013, through April 11, 2014. The dates that the Dean listed for this course do not match the transcript in the record which reports the Beneficiary took Doctoral Studies Colloquium in the fall of 2014. Therefore, the record is unclear if the Beneficiary attended [REDACTED] beginning in the spring of 2013, December of 2013, June of 2014, or the fall of 2014. This time period is critical as the requisite two-year time period began on May 6, 2013, and the Petitioner's contention on appeal is that the Beneficiary was on qualifying break in the continuity of work requirement while he was a student.

To the extent the record includes an employment agreement entered into on March 15, 2015, between the Petitioner and the Beneficiary, there is no earlier employment agreement in the record covering the required two years. In addition, there is no staff directory or organizational chart listing the Beneficiary as an employee. There are also no letters from congregants or other evidence to show that the Beneficiary led congregation services or performed any other ministerial duties such as officiating weddings, baptisms, or funerals. Although the record includes church pamphlets listing the Beneficiary's name and position, they have not been translated into English as required by the regulation at 8 C.F.R. § 103.2(b)(3)⁴ and, therefore, do not describe the extent of the Beneficiary's duties or responsibilities at the church.

The Petitioner states that the Beneficiary concluded his two years qualifying experience prior to his entry into the United States in 2010, and that his studies at [REDACTED] and [REDACTED]

of the Form I-20 signed on December 6, 2012, also does not show the Beneficiary was authorized to work. The most recent Form I-20, signed in August of 2014 by [REDACTED] in [REDACTED] Missouri, includes only the first two pages of the form.

³ As noted above, USCIS no longer requires prior work experience to be in lawful immigration status. *See supra* n.1. Therefore, if the Beneficiary did, in fact, work without authorization, the lawfulness of that employment would not be a basis for USCIS to deny this petition.

⁴ The regulation provides that documents submitted in a foreign language "shall be accompanied by a full English translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English."

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_____ constituted a qualifying break in the required work experience. However, the regulation at 8 C.F.R. § 204.5(m) does not permit that a break exceeds the requisite two years. In this instance, the Beneficiary's break for religious study was more than four years. Even if the Petitioner could establish that the Beneficiary worked as an associate pastor with the church beginning in January 2013, the break would be at least three years.

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). Considering the record in its entirety, we find that the Petitioner has not established by a preponderance of the evidence that the Beneficiary has performed qualifying religious work continuously for at least the two-year period prior to 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 religious work experience for the two years immediately preceding the date the petition was filed.

It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of N-P-C-*, ID# 17124 (AAO July 25, 2016)