



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

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

MATTER OF I-A-O-W-V-, B-C-

DATE: JUNE 14, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an Islamic mosque, seeks to classify the Beneficiary as a special immigrant religious worker to perform services as an imam. *See* Immigration and Nationality Act (the Act) section 203(b)(4), 8 U.S.C. § 1153(b)(4). This 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 Director, California Service Center, denied the petition. She concluded the Petitioner did not establish that the Beneficiary had the requisite 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. The Petitioner contends that the Beneficiary already had more than two years of qualifying work experience before he entered the United States. It submits numerous letters of support from members of the mosque.

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.

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

U.S. Citizenship and Immigration Services (USCIS) no longer requires that the two years of religious work experience described in 8 C.F.R. § 204.5(m)(4) and (11) must have been performed while in lawful immigration status.¹

II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on April 17, 2015. In support of the petition, the Petitioner submitted, among other things: a copy of the Beneficiary's visa, indicating he was admitted to the United States on October 5, 2015, as a B-2 visitor; a copy of the Beneficiary's degree in Islamic studies and Arabic; a copy of a Certificate of Merit attesting to his completion of studies in Islamic studies and a certificate attesting to his memorization of the Quran ; two letters from Pakistan attesting to his previous work experience; and a letter from the staff chaplain of the [REDACTED]

The Director issued a notice of intent to deny (NOID) the petition, requesting, in part, additional evidence of the Beneficiary's prior employment, whether he was authorized to engage in employment while in the United States, and verifiable evidence of how the Petitioner intends to

¹ 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 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 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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compensate him. In response to the NOID, the Petitioner submitted updated letters from the President of the petitioning organization and additional financial documentation.

The Director denied the petition. She concluded that the Petitioner sufficiently established its intent to compensate the Beneficiary as claimed. However, she found that it did not show that the Beneficiary met the two-year qualifying work experience requirement because his volunteer work in the United States did not qualify as work experience.

On appeal, the Petitioner contends that the Beneficiary's two years of work experience "was already established before his entry to the United States on 5th October, 2014." It explains that the Beneficiary has been volunteering at the mosque as "a trial and a test," and that his volunteer work is not meant to be the basis to establish his work experience. The Petitioner submits numerous letters of support from its members in support of the appeal.

After reviewing all of the evidence in the record, we will dismiss the appeal.

III. ANALYSIS

In this case, the petition was filed on April 17, 2015. Therefore, the Petitioner must establish that the Beneficiary has two years of qualifying work experience from April 17, 2013, until April 17, 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.

The only relevant evidence in the record for this time period is a letter from [REDACTED] the Director of the Centre for Religious Studies at [REDACTED] in Pakistan. This letter states that the Beneficiary worked full time as an imam from January 1, 2009, until September 30, 2014, and was compensated 10,000 Pakistani Rupees per month. However, the Petitioner has not submitted documentation, such as tax records or other comparable evidence, that the Beneficiary was, in fact, compensated for his work, as required by 8 C.F.R. § 204.5(m)(11). The Petitioner did not provide evidence of conversion rates from Pakistani Rupees to U.S. dollars, or address the cost of living in Pakistan. Using current conversion rates, the Beneficiary would have earned \$95 per month. Without additional documentation from the Petitioner, the record does not show that the Beneficiary was compensated for full-time religious work while in Pakistan as claimed.²

Even assuming the Beneficiary worked in a full-time, compensated position, this qualifying religious work experience ended on September 30, 2014, and does not cover the entire two-year period from

² A letter from the Principal/Dean of [REDACTED] in Pakistan, states that the Beneficiary "served as Imam from 1st January, 2004 to 31st December, 2008." This time period precedes the relevant two-year time period immediately before the petition's filing date.

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April 17, 2013, until April 17, 2015. Although 8 C.F.R. § 204.5(m)(4) allows for a break in the continuity of work during the requisite two-year period, the Petitioner has not shown that the Beneficiary was still employed as a religious worker or that the break was to further his religious training or for sabbatical. *See* 8 C.F.R. § 204.5(m)(4)(i), (iii). Rather, the record indicates that the Beneficiary was admitted to the United States as a visitor on October 5, 2014. Although the record shows he has volunteered at the petitioning organization and contacted the [REDACTED] about volunteering at a federal institution, as the Petitioner itself states on appeal, his volunteer work “is only a trial and a test from the management of the organization. It [was] never claimed as [a] basis of [his] eligibility for the said job.”

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 that the Beneficiary was compensated for full-time religious work during the two years immediately preceding the filing of the petition. Therefore, 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 two years of qualifying 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. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of I-A-O-W-V, B-C-*, ID# 16773 (AAO June 14, 2016)