U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF U-M-C-O-T-G-S-

DATE: MAY 13, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE 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 pastor. *See* Immigration and Nationality Act (the Act) § 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 or in other religious occupations or vocations in the United States.

The Director, California Service Center, denied the petition, concluding that the Beneficiary did not meet the two-year qualifying work experience requirement while in lawful immigration status. We dismissed the initial appeal, denied two subsequent motions, and rejected an appeal of our decision.

We are reopening the matter on our own motion. Upon *de novo* review, we will sustain 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. The petitioning organizations, and the foreign nationals who are the beneficiaries of this employment-based visa, must meet certain eligibility criteria. Foreign nationals may also self-petition for this classification.

Section 203(b)(4) of the Act, 8 U.S.C. § 1153(b)(4), 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]) 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) 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 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. . . .

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 preceding the submission of a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, if the experience was acquired in the United States.[1]

II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner is a located in Pennsylvania. When it filed the petition, the Beneficiary was already working as a pastor at its church. The Director denied the petition on December 3, 2007, concluding that the Petitioner did not establish that the Beneficiary worked in a full-time, compensated position for at least the two-year period immediately preceding the filing of the petition.

The Petitioner filed an appeal. While the appeal was pending, USCIS issued revised regulations for the religious worker program. Accordingly, we remanded the case back to the Director for her to adjudicate the petition based on the new regulations.

On remand, the Director again denied the petition. She found that the Beneficiary had violated her R-1 nonimmigrant religious worker status by changing employers without authorization. Specifically, the Director found that the Beneficiary's nonimmigrant visa petition had authorized her to perform religious work for the of the but that she changed employers to work at the petitioning organization in Pennsylvania prior to receiving approval. Therefore, the Director concluded that the Beneficiary did not meet the two-year prior work experience requirement while in lawful immigration status.

[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).

The Petitioner filed an appeal arguing that the Beneficiary had actually remained an employee of the her authorized employer and thus had not violated her immigration status. We dismissed the appeal and subsequently denied two motions to reopen. We also rejected an appeal of our decision.

As noted above, in July of 2015, USCIS issued a Policy Memorandum stating that petitioners no longer need to establish that the two-year qualifying work experience was in lawful immigration status. We reopened the matter on our own motion and issued a request for evidence (RFE). After a review of the entire record, including the documents the Petitioner now submits in response to our RFE, we will sustain the appeal and grant the petition.

III. ANALYSIS

In our letter reopening the matter and our RFE, we noted deficiencies and inconsistencies in the record, including ones regarding the Beneficiary's residence and work history, the Petitioner's ability and intent to compensate the Beneficiary as claimed, and the petitioning organization's tax-exempt status. We find that the evidence the Petitioner has submitted sufficiently resolves the inconsistencies in the record and that a preponderance of the evidence establishes the Petitioner's eligibility. For instance, regarding the Beneficiary's residence and work history, the Beneficiary submits a letter explaining that she and her husband are both ordained ministers in the with the Beneficiary primarily responsible for the congregation in Philadelphia and her husband primarily responsible for the congregation in New York. She states that she lived in Philadelphia from May of 2007 until July of 2013, and that during part of that time, her husband and son lived with her. The Petitioner submits, among other things, school records for the Beneficiary's son, travel records, and letters from and corroborating the Beneficiary's contentions regarding her residence and work history.

Regarding compensation, the Petitioner submits copies of pay stubs from 2007 through 2015 and tax records. The IRS Forms W-2, Wage and Tax Statements, show that the petitioning organization has consistently compensated the Beneficiary approximately $44,500 from 2008 through 2014, as claimed on the Form I-360.[2]

With respect to the Petitioner's tax-exempt status, the record contains an IRS determination letter, dated October 16, 1974, granting the group tax exemption under section 501(c)(3) of the Internal Revenue Code. The record also contains a letter from the IRS, dated June 15, 2004, confirming the church's group tax exemption. The Petitioner now submits a letter from the of the

[2] For 2007, the Petitioner submits a certified Internal Revenue Service (IRS) account transcript showing that the Beneficiary amended her 2007 tax return to reflect that the Petitioner paid her only $3,437 rather than the $33,342 she initially reported. The IRS account transcript shows that the Beneficiary amended her tax return in May of 2010. This evidence is consistent with the Petitioner's contention that she followed the advice of former counsel regarding his "highly complex and convoluted scheme" to establish that the Beneficiary remained an employee of while working for the petitioning organization in Pennsylvania. The Petitioner and Beneficiary have subsequently disavowed counsel's contentions that he made on appeal.

stating that the petitioning organization is an active congregation in its conference, and that the entire including all of the conferences and local churches such as the Petitioner, are covered under the group ruling. We find that the Petitioner has established it is a bona fide nonprofit religious organization and that it has sufficiently addressed the inconsistencies in the record that were identified in the RFE.

Moreover, the record shows the Beneficiary performed full-time, compensated religious work for at least the two-year period immediately preceding the date the Form I-360 was filed (i.e., July 20, 2005, until July 20, 2007). The record includes, but is not limited to: tax records; letters from the the and other church officials; and bank statements, all showing that the Beneficiary worked full time at and then at the petitioning organization for at least two years before the Form I-360 was filed on July 20, 2007. Although the issue of whether the Beneficiary worked in unlawful status may be reviewed at a later date if she files for adjustment of status, it is no longer a bar to eligibility for the instant petition. *See* USCIS Policy Memorandum PM-602-0119, *supra*, at 1-2; *see also Shalom Pentecostal Church v. U.S. Dep't of Homeland Sec.*, 783 F.3d 156, 160 (3d Cir. 2015) (describing the two-step process of first obtaining a visa, and then applying for permanent adjustment of status); *Matter of O*, 8 I&N Dec. 295 (BIA 1959) (the visa petition procedure is not the forum for determining substantive questions of admissibility under the immigration laws). Therefore, we find that the Petitioner has established that the Beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition. The Director's decision to the contrary is withdrawn.

IV. CONCLUSION

The Petitioner has established by a preponderance of the evidence that the Beneficiary has the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition.

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 been met.

ORDER: The appeal is sustained.

Cite as *Matter of U-M-C-O-T-G-S-*, ID# 13930 (AAO May 13, 2016)