U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-K-P-C-

DATE: MAY 17, 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 religious instructor. *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. The Director found that the Petitioner did not establish it was a bona fide nonprofit religious organization or that the Beneficiary was qualified for the proffered position.

The matter is now before us on appeal. We issued a notice of intent to dismiss the appeal (NOID) based on derogatory information obtained by the U.S. Citizenship and Immigration Services (USCIS) field office in Seoul, Korea. The Petitioner submits new evidence on appeal and in response to the NOID.

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

I. RELEVANT LAW AND REGULATIONS

The Petitioner seeks to employ the Beneficiary as a religious instructor. The Act allows foreign nationals to immigrate to the United States as ministers, or in other religious occupations or vocations, under certain criteria.

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]) 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) provides the following definitions:

Bona fide non-profit religious organization in the United States means a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the IRS [Internal Revenue Service] confirming such exemption.

. . . .

Tax-exempt organization means an organization that has received a determination letter from the IRS establishing that it, or a group that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the Internal Revenue Code of 1986 or subsequent amendments or equivalent sections of prior enactments of the Internal Revenue Code.

The regulation at 8 C.F.R. § 204.5(m)(8) addresses evidence of tax-exempt status and states:

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

(i) A currently valid determination letter from the [IRS] establishing that the organization is a tax-exempt organization; or

(ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or

(iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986 [IRC], or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, as something other than a religious organization:

(A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;

(B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;

(C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and

(D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

II. PERTINENT FACTS AND PROCEDURAL HISTORY

On June 2, 2014, the Petitioner filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, seeking to classify the Beneficiary as a special immigrant religious worker to perform services as a religious instructor. The Petitioner stated that the Beneficiary graduated with a degree in elementary school education from the [redacted] in South Korea, had nine years of experience, and had been working as a religious instructor with the petitioning organization since February 2, 2012. It submitted evidence including, but not limited to: an IRS letter, dated October 22, 1984, indicating that the [redacted] (U.S.A.) was granted tax-exempt status in January of 1964; a letter from the [redacted] (U.S.A.) indicating that the [redacted] is in good standing and "entitled to its tax-exempt

status;" copies of printouts indicating the Petitioner is a congregation on the (U.S.A.)'s website; a copy of the Beneficiary's diploma and a teaching certificate from the the Beneficiary's résumé; two employment certificates; copies of the Beneficiary's IRS Form W-2, Wage and Tax Statement, for 2012 and 2013; and copies of the Beneficiary's employment authorization cards.

The Director issued a request for evidence (RFE), seeking, in part, additional documentation that the Petitioner is covered under the (U.S.A.)'s group ruling and evidence that the Beneficiary is qualified for the proffered position. The Director specifically requested copies of the Beneficiary's academic degree, transcripts, certificates, etc., if applicable. In response, the Petitioner submitted, among other things: an IRS letter, dated January 31, 1964, granting the in the United States of America and its subordinates group tax exemption; an IRS letter, dated June 7, 1984, changing the denomination's name to (U.S.A.); a printout of churches, which includes the petitioning organization, listed under the an email from the accountant at the stating that the Petitioner is covered under the (U.S.A.)'s group ruling; a certificate of employment; and a job description for the proffered position.

The Director denied the petition, concluding that the Petitioner did not establish that it is a bona fide tax-exempt religious organization. The Director stated that although the is covered under the (U.S.A.)'s group ruling, there was insufficient evidence to show that the Petitioner is also covered under the group ruling. She stated that the Petitioner failed to provide the (U.S.A.)'s national registry of its subordinates. With respect to the Beneficiary's qualifications, the Director found that in response to the RFE, the Petitioner re-submitted the same documentation that was initially provided with the petition. She noted that the Petitioner did not include a copy of the Beneficiary's college transcripts as requested. The Director denied the petition accordingly.

On appeal, the Petitioner submits new documentation from the and the (U.S.A.) to establish its tax-exempt status. It also submits additional evidence of the Beneficiary's qualifications, including an affidavit from the Beneficiary, an academic transcript, a graduation certificate, and a letter from According to the Beneficiary, the from where she graduated, changed names and was under a new directorship. A letter from who identified himself as the Dean of the stated that in 1995, the relocated and changed its name to

We issued a NOID after receiving information from the USCIS field office in Seoul, Korea, that it could not find evidence, past or present, of the existence of the (now apparently known as the In addition, the field office received no response to an email sent to at the email address indicated on his letter.

The Petitioner has responded to the NOID with evidence including, but not limited to: another letter from his résumé, work certificates, degrees, and two books he reportedly authored;[1] and the official yearbook from 1992 with pictures of and the Beneficiary.

III. ANALYSIS

A. Bona Fide Non-Profit Organization

We find that the record establishes that the Petitioner is a bona fide non-profit organization. The record contains an IRS determination letter, dated January 31, 1964, granting the (U.S.A.) group tax exemption under section 501(c)(3) of the Internal Revenue Code. On appeal, the Petitioner submits a letter from the (U.S.A.), dated January 13, 2015, confirming that the Petitioner is a church in good standing that is covered under its federal group tax exemption. It also attached the pertinent pages of its Minutes, showing that the Petitioner is a part of the (U.S.A.). Therefore, the preponderance of the evidence shows that the Petitioner is covered under the (U.S.A.) group ruling.

The Petitioner has sufficiently established that it is a bona fide non-profit religious organization under 8 C.F.R. § 204.5(m)(5), and has satisfied the evidentiary requirements of 8 C.F.R. § 204.5(m)(8)(ii). We withdraw the Director's finding to the contrary.

B. Beneficiary's Qualifications

We also find that the Petitioner has established the Beneficiary is qualified for the proffered position. According to the Beneficiary, the seminary from which she graduated "received the new directorship's contact information and the of the College was able to retrieve [her] records in the college archives . . . ." The record contains a letter from who identifies himself as the Dean of the dated January 23, 2015. explained that in 1995, "the from which [the Beneficiary] graduated changed its name to [and] also relocated . . . ." stated that the seminary maintained archived records that can be verified.

In response to the NOID, the Petitioner submits a yearbook that is dated 1992. The cover of the yearbook clearly identifies itself as
The Petitioner flagged a page in the yearbook that depicts a photograph of the Beneficiary in a cap and gown. We find that the yearbook corroborates the Beneficiary's claims and the other evidence in the record that the Beneficiary did, in fact, graduate from the seminary in 1992.

Furthermore, the Petitioner submitted a second letter from in response to the NOID.

[1] The Petitioner submits a 331-page hardcover book and a 318-page paperback book. We note that the Petitioner has not submitted any translation of these books, such as the cover page, as required by 8 C.F.R. § 103.2(b)(3).

states that "[i]n 1992, many religious organizations and religious schools were integrated due to the movement to integrate religious organizations in Korea." He explains that some organizations participated in the "integration movement," including the school, which decided it would be managed by He confirms that the Beneficiary graduated in 1992.

The record includes copies of the Beneficiary's diploma, an academic transcript, a graduation certificate, a teaching certificate, and employment certificates showing she has worked as a religious instructor for over ten years. We find this evidence to be sufficient in establishing the Beneficiary's qualifications to be a religious instructor. We agree with the Petitioner's assertion in its letter in response to the NOID that the evidence establishes that the seminary is real and existing, and that the Beneficiary's representations about her education and experience are accurate.

Accordingly, the Petitioner has established that the Beneficiary is qualified to be a religious worker as required by 8 C.F.R. § 204.5(m)(5) and 8 C.F.R. § 204.5(m)(7)(ix). We withdraw the Director's finding to the contrary and approve the petition.

IV. CONCLUSION

The Petitioner has established that it is a bona fide nonprofit religious organization and that the Beneficiary is qualified for the proffered position.

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. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.

Cite as *Matter of C-K-P-C-*, ID# 13850 (AAO May 17, 2016)