



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

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

MATTER OF T-A-A-P-C- INC.

DATE: MAY 27, 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 “Minister of Religion/Religious Teacher.” *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 two years of qualifying work experience or that it had the ability to compensate the Beneficiary as claimed.

The matter is now before us on appeal. The Petitioner submits additional evidence on appeal in order to “cure the defects” stated in the Director’s adverse decision.

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. 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 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).

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)(10) states:

Evidence relating to compensation. 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 [U.S. Citizenship and Immigration Services]. If IRS [Internal Revenue Service] documentation, such as IRS Form W-2 [Wage and Tax Statement] 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.

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:

- (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.

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

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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 seeks to hire the Beneficiary, an ordained minister, as its “Minister of Religion/Religious Teacher” for \$21,000 per year, plus housing expenses for the first three years of employment. [REDACTED] submitted a letter with the petition explaining that the petitioning organization is a branch of the [REDACTED] and that its U.S. regional office is located in [REDACTED] Connecticut. According to [REDACTED] the Beneficiary has been employed in the proffered position at the church in Jamaica since August of 2010. A letter from [REDACTED] states that the Beneficiary “has been employed as a Teacher of Religion and Lay Preacher at the branch in . . . Jamaica since August 2010 to present.” In support of the petition, the Petitioner also submitted, among other things: an IRS determination letter; an employment contract; a Certificate of Ordination; training procedures for ministers; a booklet titled “Church Discipline 2011;” and financial documents, including the church’s financial statement, two “salary slips,” and a printout addressing income taxes in Jamaica.²

The Director issued a Request for Evidence (RFE) seeking additional documentation regarding, in part, the Beneficiary’s work history and the proposed compensation package. The Petitioner responded to the RFE with additional evidence, including but not limited to: a job description; another letter from [REDACTED] a letter from [REDACTED] an additional salary slip; and a “school leaving certificate.”³

The Director denied the petition. She found that the salary slips were insufficient to establish that the Beneficiary worked full-time in a compensated position for at least the two years prior to the filing of the petition. In addition, she concluded that the Petitioner did not establish its intent and ability to compensate the Beneficiary as claimed.

On appeal, the Petitioner submits new evidence “to cure the defects” in the adverse decision. After reviewing all of the evidence in the record, we will dismiss the appeal.

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).

² The record includes a letter from “US Immigrant Advocate, Inc.” stating that it was retained to represent the Petitioner. However, the record does not include a Form G-28, Notice of Entry of Appearance as Attorney or Representative, authorizing the group to represent the Petitioner in this matter.

³ While US Immigrant Advocate, Inc. submitted a response to the RFE, the statements in this letter are not evidence. See *supra* note 2. We will, however, give proper weight to enclosures that are a part of the correspondence.

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III. ANALYSIS

A. Two-Year Religious Work Experience

In this case, the petition was filed on November 12, 2014. Therefore, the Petitioner must establish that the Beneficiary has two years of qualifying work experience from November 12, 2012, until November 12, 2014. *See* section 203(b)(4)(iii) of the Act; 8 C.F.R. § 204.5(m)(4). As explained below, we find that the Petitioner has not submitted sufficient documentation to establish this requirement.

The Petitioner submits two letters from [REDACTED] on appeal. [REDACTED] states that the Beneficiary has worked as a teacher of religion and lay preacher in Jamaica from August of 2010 to the present. He provides details of the Beneficiary's job duties, which total 35 hour per week. We recognize that these letters, read in conjunction with the letters from [REDACTED] and [REDACTED] provide some probative evidence that the Beneficiary worked full time during the requisite two-year time period. However, aside from [REDACTED] claim that the Beneficiary is not required to file income taxes in Jamaica, none of the letters address the Beneficiary's compensation during the requisite two-year time period.

The salary slips in the record indicate that the Beneficiary earned a salary of J\$108,063, J\$113,750, and J\$117,163 in 2012, 2013, and 2014, respectively.⁴ The Petitioner has not submitted any evidence of conversion rates from Jamaican dollars to U.S. dollars, or addressed the cost of living in Jamaica. Using current conversion rates, the Beneficiary would have earned less than \$1,000 each year. Without additional documentation from the Petitioner, the salary slips do not indicate whether the Beneficiary was compensated for full-time employment from November of 2012 until November of 2014.⁵

There is no other relevant evidence in the record to corroborate the contention that the Beneficiary worked full time as a religious teacher and preacher in Jamaica from 2012 to 2014. For instance, there are no pamphlets, newsletters, or brochures in the record identifying the Beneficiary as a preacher at the church in Jamaica. There is no staff directory or organizational chart listing the Beneficiary as an employee. There are no copies of paychecks or bank account records showing the church in Jamaica paid the Beneficiary for full-time employment during the requisite two-year time period.

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

⁴ Because the Petitioner asserts the Beneficiary has been working in Jamaica, we assume that his salary slips are in Jamaican dollars.

⁵ On appeal, [REDACTED] states that the Petitioner should not have submitted the Beneficiary's 2013 salary slip and submits the Beneficiary's 2011 salary slip in order "to cure the technical defect." However, there was no error with the Petitioner submitting documentation for 2013 as the required two-year period runs from November 2012 until November of 2014.

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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).

B. Compensation

On the Form I-360 and the employment contract the Petitioner submitted with the petition, the Petitioner indicated it would compensate the Beneficiary \$21,000 per year, plus housing expenses for the first three years of employment. However, there is insufficient documentation in the record to show the Petitioner's intent and ability to compensate the Beneficiary as claimed.

On appeal, the Petitioner submits its operating budget for 2015. However, this budget conflicts with its previously submitted 2015 budget that it submitted in response to the RFE.⁶ The budget submitted on appeal shows mortgage expenses as \$22,800, half of the amount stated in the budget submitted in response to the RFE. Loan payments were also lower on appeal than previously indicated, whereas expenses such as accounting and professional fees were higher. The budget submitted on appeal includes depreciation whereas the previously submitted budget did not include this line item. The Petitioner has not addressed these inconsistencies. It is incumbent upon the Petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Id.*

Although the Petitioner submits audited financial statements for 2013 and 2014 on appeal, we note irregularities in the statements that cast doubt on their veracity. First, several line items on the financial statements have numbers that have been typed over, rendering them illegible. For instance, the church's unrestricted net assets and mission support revenue for 2013 and 2014, and rental income for 2013, are illegible. Second, the auditor's report misstates the petitioning organization's purpose. According to the report, the Petitioner "is a nonprofit corporation formed under the laws and state statutes, for the purpose of developing, owning and operating affordable housing for families of modest means and/or the elderly and to engage in other community developments." The report did not identify in which state the Petitioner was formed and makes no mention that the petitioning organization is a church with a religious purpose or nature. Third, the report is signed on pages 2 and 14. These signatures are not original signatures, but are identical signature blocks that appear to have been photocopied onto the pages. Considering these anomalies, we find the financial statements to be of limited probative value.

With respect to non-salaried compensation, [REDACTED] stated in his letter dated August 12, 2014, that the Petitioner has contacted several apartment complexes in the area which will accommodate the Beneficiary. The Petitioner has not specified the amount of the housing allowance it would provide the Beneficiary. The Petitioner has not submitted any other evidence addressing its

⁶ With respect to the budget submitted in response to the RFE, the record includes only one page. This page indicates it is "page 1 of 2."

ability and intent to compensate the Beneficiary as claimed, such as past evidence of compensation for similar positions, whether it has filed tax returns, or any IRS documentation for its U.S. employees. The record does not contain any bank account statements or other evidence to support the figures stated on the financial statements. Therefore, we find that the Petitioner has not met its burden of meeting the regulatory requirements at 8 C.F.R. § 204.5(m)(10) relating to compensation.

IV. CONCLUSION

The Petitioner has not established that the Beneficiary has two years of qualifying religious work experience prior to the filing of the petition. The Petitioner has also not established its ability and intent to compensate the Beneficiary as claimed.

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. Accordingly, the appeal is dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of T-A-A-P-C- Inc.*, ID# 16543 (AAO May 27, 2016).