U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-R-B-P-

DATE: OCT. 7, 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 priest. 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 the Beneficiary was lawfully employed as a religious worker 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 argues the Beneficiary has been continuously working in a religious vocation and was in lawful student status for more than the required two years.

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

I. LAW

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,[1] 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.

[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).

II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner filed the Form I-360 on March 5, 2014, seeking the hire the Beneficiary as an ordained priest. In part eight of the petition, the Petitioner indicated that the Beneficiary "is pursuing his religious occupation as a religious priest . . . . [He] is a recently ordained Roman Catholic Priest." In its letter submitted with the petition, the Petitioner described the Beneficiary's prior religious work experience as follows:

> [The Beneficiary] has been engaged to a religious ministry with the Roman Catholic Church since his ordination to the transitional Deaconite August 6, 2013. Later, on February 17, 2014, he was ordained as a Roman Catholic Priest . . . . [S]ince at least the last required two years, [he] has been exclusively engaged in religious studies in Seminary. . . . [T]he beneficiary has been engaged in religious activities since entering Seminary in the Fall of 2010.

In support of the petition, the Petitioner submitted, among other things: a letter from the director of its "religious formation" program, a letter from its provincial supervisor, a statement conferring the Beneficiary status as a transitional deacon, effective August 6, 2013, until February 14, 2014; a copy of the Beneficiary's priesthood ordination certificate; a copy of the Beneficiary's visa, indicating he was admitted to the United States on July 6, 2010, as a student in F-1 status; a letter and transcript from and copies of Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status.

The Director issued a notice of intent to deny (NOID) the petition, noting that the evidence showed the Beneficiary was a full-time student at from the fall of 2010 through the fall of 2013. The Director requested, among other things, additional evidence that the Beneficiary has been working continuously as a full-time religious worker in lawful immigration status since at least March 5, 2012.

In response, the Petitioner argued that the NOID "appear[ed] to require that a Seminary Student who has entered religious formation be 'employed' in the traditional sense." Citing the Religious Freedom Restoration Act, it claimed that applying this employee/employer analysis "intentionally limit[s] the Roman Catholic Church . . . from engaging in traditional religious activities" with respect to individuals entering into religious formation. It described the five stages of religious formation as: 1) candidate; 2) postulant; 3) novice; 4) deacon; and 5) ordained priest. According to the Petitioner, the Beneficiary has been continuously engaged in a religious vocation since he took vows as a religious novice prior to March 5, 2012. In addition, the Petitioner claimed any break in the work requirement was to further the Beneficiary's religious training. It submitted excerpts of its (formation plan), and an updated letter from

The Director denied the petition. She found that the Beneficiary was a full-time student at from the fall of 2010 until the fall of 2013 and noted that employment is not authorized while a beneficiary is in F-1 student status. She concluded that the Beneficiary was not lawfully employed as

a religious worker on a full-time basis for at least two years immediately preceding the filing date of the petition.

On appeal, the Petitioner repeats the arguments it made in response to the NOID. After reviewing all of the evidence in the record, we will dismiss the appeal.

III. ANALYSIS

After the Director issued her decision, as noted above, USCIS issued a policy memorandum[1] no longer requiring that the qualifying religious work experience be in lawful immigration status. *See supra* n.1. Therefore, we will evaluate only whether the Petitioner has established that the Beneficiary has the requisite two years of qualifying religious work experience (i.e., from March 5, 2012, until March 5, 2014), regardless of whether he was in lawful immigration status. *See* section 101(a)(27)(C)(iii) of the Act; 8 C.F.R. § 204.5(m)(4). For the reasons discussed below, we find the Petitioner has not established the Beneficiary worked continuously in a religious vocation for the requisite two-year period.

The record shows that the Beneficiary was a full-time student at [redacted] beginning in the fall of 2010 through the fall of 2013. The regulation at 8 C.F.R. § 204.5(m)(5)(D) specifically states that "[r]eligious study or training for religious work does not constitute a religious occupation." Therefore, the time the Beneficiary spent as a student at [redacted] does not qualify as prior work in a religious occupation. In addition, the record includes two Forms I-20 signed by [redacted] certifying that the Beneficiary was eligible as a nonimmigrant student in F-1 status. However, according to page three of the forms, the Beneficiary was not authorized to engage in any type of employment while he was a seminary student. A copy of the Beneficiary's transcript from [redacted] and a letter from the Director of Admissions and Records similarly makes no mention that the Beneficiary worked at, was affiliated with, or was in any way engaged in a religious vocation at the petitioning organization. Consequently, there is no evidence from the seminary that the Beneficiary performed any qualifying religious work at the petitioning organization while he was a student.

The Petitioner's contention that the Beneficiary has been in a religious vocation since taking vows as a religious novice does not suffice. The regulation at 8 C.F.R. § 204.5(m)(5) defines religious vocation as "a formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia, to a religious way of life." In this case, the record shows that the Beneficiary was not fully ordained as a Roman Catholic priest until February of 2014, approximately three weeks before the petition was filed. Although the Petitioner may have taken vows when he reached the novice stage of the religious formation process, according to the formation plan submitted in response to the NOID, [redacted] ¶ 11, April 11, 2003, [redacted] *see also Formation, The Path to the Life of a Priest or Brother,* [redacted] (stating that at the end of the novice stage, "novices can

petition their superiors for acceptance into temporary vows); (describing the years-long process of becoming an ordained priest). Therefore, according to the Petitioner's own description of its religious formation process, the Beneficiary was in the middle of the process during the requisite two-year period and had not yet made a formal lifetime commitment to the church. As such, he was not engaged in a religious vocation, as that term is defined in 8 C.F.R. § 204.5(m)(5), for at least the two years prior to the date the petition was filed.

We do not find that our application of the regulations to this case violates the Religious Freedom Restoration Act, as the Petitioner claims. The Petitioner is free to adhere to its formation plan, choosing its candidates and advancing them when they meet certain requirements. As in this case, the Petitioner may petition for a foreign national to enter the United States, complete a degree at a seminary, and become an ordained Catholic priest. Our application of the regulations requiring two years of prior religious work experience in a religious occupation or vocation does not significantly burden the Petitioner's religious beliefs.

To the extent the Petitioner argues that the Beneficiary's seminary studies constitute a qualifying break in the required work experience, the regulation at 8 C.F.R. § 204.5(m)(4)(i) requires that the Beneficiary was still employed as a religious worker during the break. In this case, the Petitioner concedes the Beneficiary was not "employed" by the petitioning organization and, as discussed above, we find he was not engaged in a religious vocation during the requisite two-year time period. Consequently, the time he spent as a seminary student does not qualify as a break in the continuous religious work experience requirement.

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 101(a)(27)(C)(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 religious work experience in a religious vocation or occupation.

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 T-R-B-P-*, ID# 73152 (AAO Oct. 7, 2016)