



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

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

MATTER OF C-B-C-O-C-, N-J-

DATE: OCT. 19, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a Baptist church, seeks to classify the Beneficiary as a special immigrant religious worker to perform services as a pastoral assistant. *See* Immigration and Nationality Act (the Act) section 203(b)(4), 8 U.S.C. § 1153(b)(4). This immigrant 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 of the California Service Center denied the petition finding the Beneficiary's prior experience during the two-year period before the petition filing date was not sufficient to meet the regulatory requirements.

The matter is now before us on appeal. In its appeal, the Petitioner submits a brief and argues that the Director erred in interpreting the regulations to require full time qualifying experience.

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 implementing regulation at 8 C.F.R. § 204.5(m) provides that in order to be eligible for classification as a special immigrant religious worker, a foreign national 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 . . . after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. . . .

## II. ANALYSIS

The issue within this appeal relates to the Beneficiary's qualifying experience. In denying the petition, the Director determined the Petitioner did not submit evidence demonstrating that the Beneficiary had been performing full time work for at least the two-year period immediately before the petition filing date. The Director therefore found the record insufficient to satisfy the prior experience requirement in the regulation. For the reasons discussed below, we agree with the Director's ultimate conclusion.

### A. Qualifying Experience

The qualifying employment requirements are contained in the regulation at 8 C.F.R. § 204.5(m)(4), which provides in part that a beneficiary must:

Have been working in one of the positions described in paragraph (m)(2) of this section . . . 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.

Petitioners must document a beneficiary's qualifying prior experience, and the requirements for such evidence is listed within the regulation at 8 C.F.R. § 204.5(m)(11), which 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 . . . . 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 [Internal Revenue Service] documentation that the alien received a salary, such as an IRS Form W-2 [Wage and Tax Statement] 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 [U.S. Citizenship and Immigration Services].

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

The relevant two years that preceded the filing of the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, include the period from June 1, 2013, through May 31, 2015. The Beneficiary initially entered the United States as a visitor in 2009 and was granted a change of status to a nonimmigrant religious worker in 2012. In the Petitioner's statement submitted with the

petition, it indicated the Beneficiary initially volunteered for the church, she has served as a pastoral assistant since 2010, and it began compensating her in this part time position in 2012 upon approval of the nonimmigrant religious worker petition. The initial evidence relating to the Beneficiary's qualifying work was comprised of two letters from the Petitioner, pay stubs reflecting the Beneficiary received a \$200 weekly salary, her uncertified 2014 tax return, and her 2014 Form W-2.

The Director issued a request for evidence (RFE) indicating that it appeared the Beneficiary had not been performing full-time work during the qualifying period, and requesting materials relating to her previous work for the Petitioner. The Director requested a detailed explanation of the Beneficiary's duties, average hours worked per week, and IRS documentation of her salary during the two-year timeframe. Responding to the RFE, the Petitioner stated that the regulation does not specifically require the Beneficiary to have been working full time during the two years before the petition filing date, and indicated that requiring full time qualifying work for immigrant religious workers is incongruent with the nonimmigrant religious worker regulations, which allow part time employment of 20 hours per week. The material presented in response to the RFE primarily related to the prospective work; the Petitioner did not offer the duties or typical work hours for the Beneficiary's previous work experience. The only evidence relating to the two-year qualifying period consisted of the Beneficiary's uncertified 2013 tax returns, and her 2013 Form W-2 reflecting wages of \$10,400.

Within the Director's decision to deny the petition, she mentioned the Petitioner's contention that to require full-time work experience was not in accord with the statute or the regulation, but indicated that USCIS has interpreted the two-year experience provision to require full-time work of at least an average of 35 hours per week. The Director also noted that the Petitioner did not comply with the portion of the RFE pertaining to the Beneficiary's previous experience that sought a breakdown of the duties performed, or the number of hours worked per week. The Director found that the record lacked documentation establishing the Beneficiary was performing full time work during the required period and concluded that the Petitioner had not shown that it had complied with the regulation at 8 C.F.R. § 204.5(m)(4).

On appeal, the Petitioner argues the Director erred in relying on a finding that the Beneficiary was not working full time as the only basis for denying the petition.<sup>1</sup> It contends that even though USCIS amended the regulation in 2008, the regulation was not altered to specifically require a full-time work requirement.<sup>2</sup> The Petitioner states that the Director's interpretation of the regulations as requiring full time experience is impermissible under *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, (1984), as "Congress has unambiguously spoken to the issue of a 'full-time' previous work requirement."

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<sup>1</sup> We note the Director also based her adverse decision in part on a lack of evidence relating to the duties the Beneficiary performed during the qualifying period.

<sup>2</sup> See Special Immigrant and Nonimmigrant Religious Workers Final Rule and Notice, 73 Fed. Reg. 72276 (November 26, 2008).

The *Chevron* analysis of statutory interpretation first asks whether Congress has answered the precise issue at hand in the statutory text, and second, if Congress was silent or ambiguous, courts are to defer to permissible or reasonable agency interpretations. In this instance, the text of the Act requires the foreign national to have “been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described [above].” The Petitioner cites to documents related to the legislative history of the Act as evidence that Congress did not intend to require full time experience.

Regarding the Petitioner’s argument that the regulations do not explicitly state that previous work experience must have been full time, we disagree. The regulations require that a beneficiary must have been “working in one of the positions *described in paragraph (m)(2)* of this section . . . continuously for at least the two-year period immediately preceding the filing of the petition.” See 8 C.F.R. § 204.5(m)(4) (emphasis added). The referenced regulation at 8 C.F.R. § 204.5(m)(2) describes that a beneficiary must be “coming to the United States to work in a full time (average of at least 35 hours per week) compensated position” as a minister, in a religious vocation, or in a religious occupation. Therefore, the plain language of the regulations mandate that prior qualifying work experience must have been full time and compensated.<sup>3</sup>

Moreover, the legislative history of the implementing regulations supports our interpretation. Prior to the regulations being revised in 2008, we had consistently interpreted the Act and regulations to require that a beneficiary’s religious work experience during the two-year period immediately preceding the filing of the petition must have been full time and compensated. The regulations were revised to address widespread fraud and abuse in the religious worker program. As such, the new regulations that are currently in effect were established to provide additional evidentiary requirements, not reduce them. For USCIS to now interpret the regulations as the Petitioner argues would loosen, rather than tighten, the restrictions required by Congress to reduce or eliminate fraud and abuse. At no time has Congress legislatively modified or overruled our long-standing interpretation of the previous work experience requirement, and we presume that Congress agrees with our interpretation. See *Lorillard v. Pons*, 434 U.S. 575, 580 (1978) (“Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change.”).

The Petitioner’s final argument relates to its claim that this case is genuine and falls outside of the type of fraudulent cases the 2008 regulatory changes targeted. The Petitioner maintains that it has twice withstood the 2008 regulatory amendments, implying the Beneficiary’s previously approved nonimmigrant petitions should affirmatively impact the present immigrant petition. Regarding the previously approved petitions, we first note that nonimmigrant religious worker petitions have

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<sup>3</sup> We note that the regulation at 8 C.F.R. § 204.5(m)(11)(iii) indicates a petitioner may submit evidence that a beneficiary was self-supporting during the qualifying period. In elaborating on this issue in the final rule, USCIS determined that the sole instances where foreign nationals may be uncompensated are those who are “participating in an established, traditionally non-compensated, missionary program.” Special Immigrant and Nonimmigrant Religious Workers Final Rule and Notice, 73 Fed. Reg. at 72278.

different requirements regarding the required hours of prospective employment and do not include requirements relating to a beneficiary's qualifying experience. Further, while USCIS has approved at least two nonimmigrant visa petitions filed on the Beneficiary's behalf, the prior approvals do not preclude USCIS from denying an immigrant visa petition based on a different standard. We also note that many immigrant petitions are denied after USCIS approves prior nonimmigrant petitions.<sup>4</sup>

The Petitioner alternatively argues that even if USCIS' full-time interpretation is proper, the appeal should be sustained because this case falls outside of the scope of the types of fraudulent cases that prompted the regulatory amendment in 2008. The Petitioner does not offer support for its position that only cases involving corruption or fraud should be subject to the requirement that the two years of qualifying experience must be of a full time nature.

### III. CONCLUSION

For the reasons discussed above, the Petitioner has not established the Beneficiary possessed the regulatory prescribed qualifying experience in the two years before it filed the petition. Accordingly, the Petitioner has not met its 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).

**ORDER:** The appeal is dismissed.

Cite as *Matter of C-B-C-O-C-, N-J-*, ID# 73226 (AAO Oct. 19, 2016)

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<sup>4</sup> See, e.g., *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989).