



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

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

MATTER OF C-C-C-, S-, G- INC.

DATE: OCT. 20, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a Pentecostal church, seeks to classify the Beneficiary as a special immigrant religious worker to perform services as a bilingual translator, broadcaster, and producer. *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 California Service Center Director denied the petition. The Director determined that the Petitioner had not shown the Beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and argues that the Director erred in her determination.

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

In denying the petition, the Director determined the Petitioner did not submit sufficient evidence of the Beneficiary's qualifying experience during the two years preceding the filing of the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. For the reasons discussed below, we agree with the Director. We have also determined that the Petitioner has not established that the offered position qualifies as a religious occupation.

A. Qualifying Experience

The regulation at 8 C.F.R. § 204.5(m)(4) establishes the prior work requirements and provides in part that a beneficiary must:

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 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.

The regulation at 8 C.F.R. § 204.5(m)(11) provides the documentary requirements petitioners must submit to verify a beneficiary's qualifying experience:

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 [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.

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/laws/policy-memoranda>.

The relevant two-year timeframe prior to the petition filing date covers the period from May 30, 2013, through May 31, 2015. The Petitioner has indicated the Beneficiary worked for two entities

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during the qualifying period. The first entity was the [REDACTED] in Venezuela (overseas church) from May 30, 2013, until August 18, 2014, when the Beneficiary entered the United States. The Petitioner maintains that the Beneficiary gained the remainder of his experience with the petitioning entity. The Petitioner indicated that the Beneficiary owns a successful company that allowed him to volunteer his time at the overseas church as a family group leader, a musician in the worship group, and a religious broadcaster and coordinator. It also submitted a letter from the overseas church within the initial filing reflecting that the Beneficiary is an active member of its organization, and that since 2010 he served in various roles as an unpaid volunteer. Pertaining to the Beneficiary's qualifying work for the petitioning entity, within the initial filing the Petitioner indicated he volunteered with their organization while on sabbatical in the United States, but it did not specify the dates of this volunteer work.

Seeking additional information, the Director issued a request for evidence in part relating the Beneficiary's employment during the two-year qualifying period. The Petitioner responded with two letters from the Beneficiary and two letters from the overseas church. The Beneficiary's letters explained that he moved his graphic design office and staff into the overseas church's facilities to regularly be available for the church's necessities. The Beneficiary indicated that his graphic design company provided the overseas church with services in return for giving the company a full-functioning office at no cost. The Beneficiary's letters also described how he supported himself while in the United States. The letters from the overseas church explain that the church provided him with office space in which to operate and also detailed the Beneficiary's duties for the church. The Director concluded that the evidence did not establish that the Beneficiary had been performing full-time, compensated work during the entire two-year period.

Within the appeal, the Petitioner offers a new letter from the overseas church, documentation illustrating some of the work the Beneficiary performed for the overseas church, and materials showing how the Beneficiary maintained his self-support.

1. Prior Experience in a Religious Occupation

a. Foreign Work Experience

The regulation at 8 C.F.R. § 204.5(m)(4) and (2) requires beneficiaries to have been continuously working in as a minister, in a religious occupation, or in a religious vocation for at least the two-year period immediately preceding the petition filing date. In this instance, the Petitioner has indicated that the Beneficiary was working in a religious occupation. The definition of a religious occupation at 8 C.F.R. § 204.5(m)(5) provides:

Religious occupation means an occupation that meets all of the following requirements:

- (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.

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- (B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.
- (C) The duties do not include positions that are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible.
- (D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

The Petitioner provided multiple letters from [REDACTED] the pastor of the overseas church. As this church is a member of the [REDACTED] – [REDACTED] the Petitioner bears the burden of demonstrating that this denomination recognizes the position the Beneficiary occupied as a religious occupation. [REDACTED] indicated the Beneficiary performed three roles with the overseas church: media coordinator for 20 hours per week, musician for 12 hours per week, leader of small Bible study group for eight hours per week.

Pertaining to the duties as a media coordinator, [REDACTED] indicated the Beneficiary: (1) advised the pastoral team in effective visual communication; (2) generated advertising campaigns for various church ministries; (3) coordinated the church's media teams and graphic design; (4) supervised the design process; (5) purchased and managed "POP" material; (6) drafted and monitored the design of weekly newsletter; and (7) elaborated within multimedia presentations for sermons. As a musician, the Beneficiary participated in the rehearsals on Friday's, and played the drums or keyboards during services. Finally, in the role of small group leader he prepared a weekly lesson, directed Bible study groups, preached the gospel in the Bible study group to those who did not know God, directed and supervised a Bible study with advanced disciples, and reported the status of the Bible study program to the pastor on a monthly basis. While the record reflects that the duties as a Bible study leader are primarily religious, the Petitioner did not explain how the duties within the other two roles are *primarily* related to a traditional religious function, or are primarily related to, and clearly involved, inculcating or carrying out the religious creed and beliefs of the denomination.¹ Further, the Petitioner has not offered probative material demonstrating the [REDACTED] – [REDACTED] [REDACTED] recognizes any one of these positions as a religious occupation, nor did it establish the denomination views any combination of the positions as a religious occupation.²

b. United States Work Experience

Within the initial filing the Petitioner's senior pastor, [REDACTED] indicated he first met the Beneficiary while he was volunteering with the petitioning church. The Petitioner did not offer the

¹ See the definition of a religious occupation at 8 C.F.R. § 204.5(m)(5)(A) and (B).

² *Id.* at (A).

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date the Beneficiary began performing the duties for the church. In an April 2015 letter supporting the Petition, [REDACTED] indicated that “during his sabbatical,” the Beneficiary performed volunteer work for the Petitioner. The Petitioner has not established that the Beneficiary continuously performed such work from the date he entered the United States on August 18, 2014, until the date of the pastor’s April 2015 letter. As the Petitioner has not established when the Beneficiary began performing the duties it argues serve as his qualifying prior experience, and as we find below that his work as a volunteer cannot be considered qualifying, it is unnecessary for us to analyze whether his duties satisfied the definition of a religious occupation at 8 C.F.R. § 204.5(m)(5).

We note that the Petitioner characterized the Beneficiary’s time in the United States as a “sabbatical,” from his religious work abroad. While the regulation at 8 C.F.R. § 204.5(m)(4) includes “sabbatical” as a permissible reason for a break in the continuity of qualifying religious work, that regulation also requires a beneficiary to be “still employed as a religious worker” during the break. Here, as the Petitioner has not established that the Beneficiary was engaged in qualifying employment abroad, it has not met the requirements of a qualifying “break” under the regulations.

2. Prior Experience as Compensated and Full Time

The regulation at 8 C.F.R. § 204.5(m)(11) describes the evidentiary requirements to document a beneficiary’s prior employment. Regarding the Beneficiary’s prior employment at the overseas church, the Petitioner attests he received non-salaried compensation while employed outside the United States. It must therefore offer material that is comparable to IRS documentation of the non-salaried compensation if available. *Id.* The Petitioner, the Beneficiary, and [REDACTED] each state that the overseas church furnished the Beneficiary’s company with office space, free of charge, in exchange for he and his company offering their services to the church. These statements, unsubstantiated by supporting evidence, are insufficient to satisfy the Petitioner’s burden of proof. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). Although these parties assert the office space was provided, the Petitioner has not presented probative evidence demonstrating the exchange occurred. For example, the Petitioner provided a photograph of an office space with his foreign company listed on the door, but the record lacks documentation that this office space is located inside the overseas church as claimed. The Petitioner did not submit corroborating items such as mail for the Beneficiary’s foreign company addressed to the overseas church’s address, or other probative materials.

On appeal the Petitioner also furnishes a statement from counsel indicating Venezuela does not require taxes on non-salaried compensation and that no government records exist. Such declarations that are not corroborated with supporting evidence are not sufficient. *Soffici*, 22 I&N Dec. at 165. The Petitioner also offers email exchanges between the Beneficiary and [REDACTED]. However, this material is not comparable to IRS documentation of the non-salaried compensation, nor does it establish that the overseas church provided the Beneficiary and his company with office space or that such space was free of charge. As a result, the Petitioner has not demonstrated that the

Beneficiary's prior experience for the overseas church was compensated in accordance with 8 C.F.R. § 204.5(m)(11).

The Petitioner contends that the regulations do not explicitly state that previous work experience must have been compensated, citing to two judicial opinions. We note that both decisions were issued before USCIS amended the religious worker regulations. As a result, we do not find the judicial opinions to be applicable. The current 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) requires 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.

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 promulgated 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) (indicating that Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it reenacts a statute without change). Consequently, the Petitioner has not shown the Beneficiary satisfied the regulation as it relates to his prior experience outside or within the United States.

Finally, the Petitioner indicated the Beneficiary was self-supporting after arriving in the United States while he volunteered at the church. The regulation at 8 C.F.R. § 204.5(m)(11) specifically requires that a beneficiary's prior experience have been compensated either by salaried or non-salaried compensation (such as room and board), but can also include self-support under limited conditions. 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."³ The Petitioner has neither claimed nor established that the Beneficiary was participating in such a program. Accordingly, any time the

³ Special Immigrant and Nonimmigrant Religious Workers Final Rule and Notice, 73 Fed. Reg. 72276, 72278 (Nov. 26, 2008); see also 8 C.F.R. § 214.2(r)(11)(ii).

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Beneficiary may have spent in the United States working as a volunteer cannot be considered qualifying employment.

Based on the foregoing, the Petitioner has not shown that the Beneficiary possessed the required prior work experience.

B. Proposed Position as a Religious Occupation

The Petitioner must establish the offered position meets the definition of a religious occupation. Within the proceedings before the Director, the Petitioner provided the proposed position's duties and number of hours per week the Beneficiary would perform his translating, broadcasting, and producing duties. The record reflects that the Beneficiary will perform the following for a total of 40 hours per week:

1. Operate monitor and adjust audio and video equipment to ensure quality for five hours per week
2. Light and shoot programming segments for two hours per week
3. Set up and tear down equipment for services and performances for two hours per week
4. Use recording equipment or computers sometimes using complex software for two hours per week
5. Make videos for worship services for four hours per week
6. Convert video and audio recordings to digital format for editing on computers for two hours per week;
7. Build and execute social media strategy for two hours per week
8. Design and update the church's website for two hours per week
9. Create and design godly marketing camp campaigns including writing the content, designing the fliers, banners, posters, emails, bulletins, etc. in English and Spanish for eight hours per week
10. Generate, edit, publish, and share daily content with both English and Spanish for four hours per week
11. Convert hand written materials from one language to another interpreting spiritual terminology in colloquial language in both languages for two hours per week
12. Perform simultaneous translation of worship services and/or oversee the translation crew for five hours per week.

As evidence that the offered position meets the regulatory requirements of a religious occupation, the Petitioner submitted a letter from [REDACTED] Administrative Bishop overseeing the [REDACTED] state offices. [REDACTED] explained how the positions of translators, broadcasters, and producers are recognized as traditionally religious functions and are traditional religious occupations in the denomination. Pertaining to translators, the bishop discussed translation of religious texts from the Old to the New Testament and, in modern times, translation of church materials such that the intended religious context and message are conveyed. When discussing broadcasters and producers, the bishop states that since the arrival of television circa the 1950s,

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broadcasters and producers have been entrusted to produce and disseminate communications that accurately reveal the tenets of the faith. He also points to the undergraduate major in digital media studies at [REDACTED] as further evidence that the denomination views these positions as religious occupations.⁴ We must consider the duties of the occupation and whether such duties satisfy the regulatory definition of a religious occupation, rather than whether a religious university offers coursework in a field of study.

Regarding the offered position, the Petitioner has consolidated the duties of several occupations into the proposed position. The Beneficiary will perform the duties related to producing, marketing strategy, website development, advertising, broadcasting, and a translation. While we acknowledge that some duties may overlap, or that some jobs have at least some unrelated duties, the Petitioner has not established that we should consider several separate jobs as a single recognized religious occupation. In addition, the Petitioner has not shown the production duties associated with items 1-6 listed above primarily relate to a traditional religious function within the denomination and involve carrying out the religious creed and beliefs of the denomination. These duties comprise 17 work hours per week. [REDACTED] contends that producers are entrusted to produce and disseminate media that accurately reveals the tenets of the faith, and this message becomes the voice of the faith to the world. The Petitioner has not established that the Beneficiary's actual duties in recording and editing the content of the work of others is primarily related to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination. Further, the Petitioner has not shown that the marketing and web development duties associated with items 7-8 are primarily religious in nature.

While the Beneficiary's stated duties as a translator appear primarily religious in nature, these responsibilities make up a relatively small share of his proposed work. Therefore, the Petitioner's contention that the Beneficiary will spend 40 hours per week performing duties that are primarily religious in nature is not supported. The proposed schedule, in which the Beneficiary serves primarily as a producer, a marketing strategist, a website developer, or a promotion and advertising manager, does not correlate with the regulatory definition of a religious occupation. It appears the Beneficiary will occupy several positions that are not religious occupations, and he will perform periodic religious-oriented work. This is insufficient to meet the regulatory requirements for a religious occupation.

While [REDACTED] states that the organization views the roles of translator, broadcaster, and producer to have very significant religious implications for communicating the tenets of the faith, the Petitioner has not sufficiently established that the technical duties comprising the majority of the Beneficiary's workload primarily relate to or involve carrying out the religious creed and beliefs of the denomination according to the relevant regulatory requirements. Thus, we find that the

⁴ The fact that a Christian university offers a major in digital media studies is not persuasive evidence that the field of work is a traditionally recognized occupation. We note that the university also offers undergraduate majors in such fields as accounting, athletic training, business administration, and theater. See [REDACTED] listing of degree programs at [REDACTED]

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Petitioner has not established that the offered position meets the remaining regulatory requirements of a religious occupation.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established that the Beneficiary was continuously engaged in qualifying religious work during the two years period before it filed the petition. We further find that the record does not establish that the proposed position satisfies the regulation as a religious occupation. 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-C-C-, S-, G- Inc.*, ID# 8395 (AAO Oct. 20, 2016)