



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

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

MATTER OF I-C-V-N-

DATE: SEPT. 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 youth pastor and worship minister. 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 it was a bona fide non-profit religious organization or that the Beneficiary had the requisite religious work experience 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 states that it called the Internal Revenue Service (IRS), but that it did not send the Petitioner the requested tax-exempt determination letter. The Petitioner also contends that the Beneficiary has the required work experience as a pastor. It submits additional evidence on appeal.

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:

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- (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. . . .

II. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

The Petitioner filed the religious worker petition on July 30, 2015, including a religious denomination certificate attesting to its affiliation with the [REDACTED] located in [REDACTED] Texas. The Petitioner indicated that the Beneficiary had been a missionary in three different countries. In support of the petition, it submitted, in part: letters from [REDACTED] the petitioning organization's pastor; a letter from [REDACTED] of the [REDACTED] a letter from the IRS assigning the Petitioner an employer identification number (EIN); and a copy of the Petitioner's bank account statement.

The Director issued a request for evidence (RFE) seeking, among other things, additional documentation of the Beneficiary's work experience, the Petitioner's non-profit status, and the proposed compensation. In response to the RFE, the Petitioner specified that it would compensate the Beneficiary \$400 per week. It submitted documents including, but not limited to: an assumed name certificate from [REDACTED] Texas; a claim for state sales tax exemption for items purchased

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).

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at [REDACTED] an application for state sales tax exemption from [REDACTED] updated letters from [REDACTED] and [REDACTED] a description of the Beneficiary's proposed job duties; and letters of support for the Beneficiary.

The Director denied the petition. She found that the Petitioner did not establish it is a bona fide non-profit religious organization as described in section 501(c)(3) of the Internal Revenue Code. The Director also concluded that the Petitioner did not establish that the Beneficiary had been employed as a religious worker for at least the two-year period immediately preceding the petition filing date. Among other things, she specified that [REDACTED] letters did not include the dates the Beneficiary reportedly worked, did not state whether or not he was compensated for his services, and indicated the Beneficiary is working at a software development company.

On appeal, [REDACTED] states that he called the IRS to ask for documentation that the petitioning organization qualifies as a non-profit organization, but the IRS merely re-sent the letter assigning the organization an EIN. The Petitioner submits a letter from the Beneficiary and four letters from churches in Mexico and Venezuela addressing the Beneficiary's work history.

We have reviewed all of the evidence in the record. As explained below, we will dismiss the appeal.

III. ANALYSIS

A. Bona Fide Non-Profit Organization

The Petitioner must establish it is a bona fide non-profit, religious organization. *See* 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)(5) provides, in pertinent part, 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 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.

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The regulation at 8 C.F.R. §204.5(m)(8) addresses the evidentiary requirements 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 Internal Revenue Service (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, 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.

In this case, the Petitioner does not contest the Director's finding that it has not submitted its own IRS determination letter showing it is exempt from taxation. Although it submitted a religious denomination certificate attesting to its affiliation with the [REDACTED] the certificate was signed by [REDACTED] instead of an authorized representative of the [REDACTED]. There is no IRS letter establishing that the [REDACTED] is exempt from federal income taxes, no documentation addressing its religious nature or purpose, and no other documentation establishing that the Petitioner is affiliated with or covered under any group exemption. Although the record includes letters from [REDACTED] maintaining that the Petitioner is an active church in the [REDACTED] there is similarly no evidence that the [REDACTED] is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code or that

it has a group exemption that covers the petitioning organization. Therefore, the Petitioner has not established by a preponderance of the evidence that it is a bona fide non-profit religious organization as defined under 8 § 204.5(m)(5) or that it has satisfied the evidentiary requirements of 8 C.F.R. § 204.5(m)(8).

B. Two-Year Religious Work Experience

Section 101(a)(27)(C)(iii) of the Act and 8 C.F.R. § 204.5(m)(4) require that beneficiaries have had continuous religious work experience for at least the two-year period prior to the date the petition is filed. The regulation at 8 C.F.R. § 204.5(m)(11) addresses the evidentiary requirements and 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.² 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.

In this case, the petition was filed on July 30, 2015. Therefore, the Petitioner must establish that the Beneficiary has been working continuously as a religious worker from at least July 30, 2013, until July 30, 2015. We find that the Petitioner has not submitted sufficient documentation to establish that the Beneficiary has been working continuously as a religious worker for the requisite two-year time period.

² Qualifying religious work experience for the two-year period no longer needs to be obtained while in lawful immigration status. *See supra* n.1.

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According to [REDACTED] in the past four years, the Beneficiary has “worked as a Bilingual interpreter and coordinator of informatics technologies [sic] and communication [H]e is still working as an interpreter and Project Leader” for a software development company for businesses.

A letter from the Beneficiary submitted on appeal confirms that he has worked as a translator since 2010 and that since 2015, he has been working at a software company. Although the record also includes documentation showing that the Beneficiary founded a church in Venezuela in 2006 and another church in Mexico in 2010, these documents address a time period that precedes the relevant two-year time period.³ There are no documents in the record, including the Beneficiary’s own statement, that contend he worked full time as a religious worker in any church during the requisite two-year period.

There is also insufficient evidence addressing the Beneficiary’s compensation during this two-year time period. The Beneficiary contends on appeal that since December of 2012, he and his family are supported by contributions from the congregation he started in Mexico. Although he states that he has attached email correspondence with [REDACTED] showing the contributions he received from March of 2013 through January of 2016, the attached correspondence has not been translated into English, as required by 8 C.F.R. § 103.2(b)(3). A certificate from [REDACTED] a member of the financial committee from the church in Mexico, certifies that since December of 2012, the congregation has contributed 3,000 pesos per month to the Beneficiary for his and his family’s expenses. She specifies that he was compensated by delivering “cash monthly in [the Beneficiary’s] hands or in hands of his wife.” However, the record shows that the Beneficiary entered the United States on July 29, 2015, using a B-2 visitor’s visa. It is unclear how or why the church in Mexico continues to pay the Beneficiary for more than six months after he left the country. In addition, the Petitioner has not provided evidence of conversion rates from pesos to U.S. dollars or addressed the cost of living in Mexico. Using the conversion rate on the date the petition was filed on July 30, 2015, the Beneficiary would have been paid \$159 per month from his church in Mexico. We find that the record does not sufficiently provide documentation, such as tax records or other comparable evidence, that the Beneficiary was, in fact, compensated for prior employment performing qualifying religious work, as required by 8 C.F.R. § 204.5(m)(11).

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.

C. Full-Time, Compensated Position

Although not addressed by the Director, we find that the Petitioner has not established that the

³ For example, the record includes a statement from [REDACTED] addressing the Beneficiary’s work at [REDACTED] in Venezuela from 2002 to 2006. A statement from [REDACTED] maintains that he and the Beneficiary founded [REDACTED] in Venezuela in 2006. A certificate from [REDACTED] contends the Beneficiary worked as “spiritual and social help” from 2002 to 2007.

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Beneficiary will be working in a full time, compensated position. The regulation at 8 C.F.R. § 204.5(m)(2) requires that the Petitioner establish that the Beneficiary will be coming to the United States to work in a full time (average of at least 35 hours per week), compensated position. The regulation at 8 C.F.R. § 204.5(m)(7) specifies that the prospective employer must specifically attest to the following:

(vii) That the alien will be employed at least 35 hours per week;

.....

(xi) That . . . any salaried or non-salaried compensation for the work will be paid to the alien by the attesting employer; and

(xii) That the prospective employer has the ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become public charges, and that funds to pay the alien's compensation do not include any monies obtained from the alien, excluding reasonable donations or tithing to the religious organization.

The regulation at 8 C.F.R. § 204.5(m)(10) addresses the evidentiary requirements for compensation and 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. If IRS 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.

According to the job duties outlined by [REDACTED] the Beneficiary would be performing a total of 34 hours of religious work per week, falling short of the required minimum of 35 hours per week.

With respect to compensation, as [REDACTED] stated in his letter initially submitted with the petition, the Beneficiary would be the church's first paid employee as all other workers are volunteers. [REDACTED] explained in his response to the RFE that the Beneficiary's salary would come "from all of the offerings gathered every week and funds already [e]stablished to pay one or two capable ministers . . ." The only financial documentation in the record consists of a single page of the Petitioner's bank statement that does not show the petitioning organization's account balance. There is no evidence addressing the church's income or how much money is collected from its congregants. The record does not include any budgets, financial statements, IRS tax documentation, or an explanation for the lack of such documentation. Therefore, the record does not include

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sufficient documentation showing the petitioning organization's ability and intent to compensate the Beneficiary \$400 per week as promised.

IV. CONCLUSION

Considering the record in its entirety, we find that the Petitioner has not established by a preponderance of the evidence that it is a bona fide non-profit religious organization or that the Beneficiary had the requisite two years of qualifying religious work experience. We further find that the Petitioner has not shown that the Beneficiary will be coming to the United States to work in a full time, compensated position.

It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act; *Matter of Otiende*, 26 I&N Dec. at 128. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of I-C-V-N-*, ID# 17972 (AAO Sept. 7, 2016)