



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

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

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

DATE: SEPT. 13, 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 Hispanic family counselor. 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 that the proffered position qualified as a religious occupation 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 the position of Hispanic family counselor has been recognized by the church as a religious traditional function since 1886 and could only be considered secular in nature if taken out of context. The Petitioner also contends that the Beneficiary has the required religious work experience by working in Venezuela and volunteering at the petitioning organization. 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)).

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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,<sup>1</sup> 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 September 24, 2015, as an affiliate of the Church of God. It submitted a letter from its senior pastor, [REDACTED] who described the church's large influx of Hispanic members and the need to have a permanent Spanish-speaking family counselor. She stated that she first met the Beneficiary when he was on sabbatical, while he was volunteering at the petitioning organization by performing family counseling, producing videos, and leading Spanish classes. The Petitioner also submitted, in part: a copy of its financial policies; its 2015 budget; the Beneficiary's job offer; a job description; the Beneficiary's résumé; and copies of the Beneficiary's degrees.

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<sup>1</sup> 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](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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The Director issued a request for evidence (RFE) seeking, among other things, additional documentation regarding the proffered position's job duties and the Beneficiary's work history. In response to the RFE, the Petitioner submitted documents including, but not limited to: a letter from the Beneficiary; copies of the Beneficiary's bank account statements; a letter from [REDACTED] of [REDACTED] in Venezuela; an updated letter from [REDACTED] certificates showing the Beneficiary participated in church programs in Venezuela; and a new job description.

The Director denied the petition, finding that the Petitioner did not establish that the proffered position of Hispanic family counselor qualifies as a religious occupation. She specified that the evidence did not show that the job duties primarily relate to a traditional religious function or that the position is recognized as a religious occupation within the denomination. In addition, the Director concluded that the Petitioner did not show that the Beneficiary has been employed as a religious worker for at least the two-year time period immediately preceding the petition filing date.

On appeal, the Petitioner argues that "[a] Hispanic Family Counselor from the point of view of the Church of God is a position that has been recognized by them as a religious traditional function since 1886." It contends that the job duties of the position involve a number of clearly religious responsibilities, including: counseling individuals using Biblical principles; Bible teaching; providing Christian-based therapy; and teaching "therapy that God is their deliverer, might counselor, avenger, guide, protector, provider, Etc." The Petitioner further argues that the Beneficiary meets the two-year religious work experience requirement because he worked overseas as a youth pastor beginning in 2011 and volunteered at the petitioning organization. In support of its appeal, the Petitioner submits letters from an associate pastor in Venezuela, the administrative bishop of the Church of God, and the Beneficiary.

We have reviewed all of the evidence in the record and will dismiss the appeal.

### III. ANALYSIS

#### A. Religious Occupation

The regulation at 8 C.F.R. § 204.5(m)(5) provides, in part, the following definition:

*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.
- (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

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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.

We find that the Petitioner has not established the proffered position meets the regulatory definition of a religious occupation. Specifically, the Petitioner has not shown by a preponderance of the evidence that the denomination recognizes Hispanic family counselors as a religious occupation, as required under subpart A. The record indicates that the position of Hispanic family counselor is a new position, not one that has been recognized by the denomination as a religious occupation. For instance, according to [REDACTED] the petitioning organization has had a recent influx of Spanish-speaking congregants and, as a result, it seeks to hire the Beneficiary, who was a volunteer, on a permanent basis.

On appeal, a letter from [REDACTED] the administrative bishop who oversees the Church of God in south Georgia, contends that “[c]ounseling has been recognized as a traditional religious function at the Church of God since it’s [sic] inception in 1886.” However, the regulation requires that the denomination recognizes the occupation itself – i.e. the position of Hispanic family counselor – as a religious occupation. [REDACTED] does not contend that there is any congregation within the Church of God that has employed Hispanic family counselors. Despite [REDACTED] contention that the Church of God has over seven million members in nearly 180 countries, there is no evidence that the proffered position exists in its churches. Although the record includes the Petitioner’s bylaws, as well as literature entitled “The Design for the Christian Church (Disciples of Christ) in the United States and Canada” and “Theological Foundations and Policies and Criteria for the Ordering of Ministry of the Christian Church (Disciples of Christ),” none of these documents mention the position of a Hispanic family counselor. Instead, these documents discuss the positions of pastors, deacons, and elders, and their respective job requirements.

In contrast to an established, recognized religious occupation with clear job requirements, in this case, the job requirements for the proffered position have inexplicably changed. The initial job description submitted with the petition stated that the level of education required for the position was a Bachelor’s degree and one year of work experience. However, in response to the RFE, the Petitioner submitted a different job description for the same position, listing that the level of education required was a Master’s degree and at least five years of work experience. The Petitioner has not provided an explanation for this discrepancy. As such, the requirements for the proffered position are unclear, showing that the denomination has not settled upon the requirements for this newly created position. Accordingly, the record does not show that the proffered position of Hispanic family counselor is recognized as a religious occupation within the denomination. We find that the Petitioner has not established by a preponderance of the evidence that the proffered position meets the regulatory definition of a religious occupation as defined in 8 C.F.R. § 204.5(m)(5).

#### B. Two-Year Religious Work Experience

Section 101(a)(27)(C)(iii) of the Act and the implementing regulation at 8 C.F.R. § 204.5(m)(4) requires that beneficiaries have had continuous religious work experience for at least the two-year

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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. 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 September 24, 2015. Therefore, the Petitioner must establish that the Beneficiary has been working continuously as a religious worker from at least September 24, 2013, until September 24, 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.

As the Petitioner states in its appeal brief:

After several years of working hard in the ministry, [i]n September 2014, [the Beneficiary] and his wife decided to take a year off to give their undivided attention to their two children. They decided that visiting the U.S. for a sabbatical year would be a welcome relief from their rigorous work lives. . . . During his sabbatical, the Beneficiary and his family started attending worship services at [the petitioning organization].

initial letter submitted with the petition described that she met the Beneficiary “during his sabbatical,” when he was volunteering at the petitioning organization. A Form I-94 in the record

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confirms that the Beneficiary entered the United States on September 12, 2014, using a B-1 visitor's visa. Therefore, the record shows that the Beneficiary was not working, but rather was on a sabbatical to visit the United States and focus on his family beginning in September of 2014, the middle of the requisite two-year time period.

In addition, we find there are inconsistencies in the evidence to show the extent to which the Beneficiary worked in a religious occupation while in Venezuela. A letter from [REDACTED] maintains that the Beneficiary worked 40 hours per week at the church in Venezuela from August of 2012 to August of 2015. However, the record shows the Beneficiary departed Venezuela in September of 2014. The Beneficiary's résumé similarly claims he worked at his church in Venezuela from 2012 to 2015; a year after he entered the United States. Moreover, as the Petitioner concedes, the Beneficiary worked as a Freelance Audiovisual Producer in Venezuela to support his family.

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). It is incumbent upon the Petitioner to resolve any inconsistencies in the record by independent objective evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Considering the record in its entirety, we find that the Petitioner has not shown 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.

#### IV. CONCLUSION

The Petitioner has not established that the proffered position meets the regulatory definition of a religious occupation or that the Beneficiary had the requisite two years of qualifying religious work experience.

In visa petition proceedings, 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 C-C-C-, S-, G- Inc.*, ID# 10232 (AAO Sept. 13, 2016)