



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

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

MATTER OF Y-S-T- INC.

DATE: SEPT. 28, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner is a school that seeks to employ the Beneficiary as a Hebrew teacher. 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 Beneficiary had the required two years of full-time religious work experience.

The matter is now before us on appeal. The Petitioner argues that the Beneficiary was “essentially” a full-time employee during the two-year qualifying time period because she spent at least an additional 15 to 20 hours per week developing lesson plans and performing other administrative duties. The Petitioner contends that, in any event, the Act and implementing regulations do not require that previous work experience be full time. 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. The prior religious work need not correspond precisely to the type of work to be performed. . . .

II. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

On March 15, 2013, the Petitioner filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, seeking to employ the Beneficiary as a Hebrew teacher. In support of the petition, the Petitioner submitted evidence including, but not limited to: documentation that the Beneficiary worked for the petitioning organization as an R-1 nonimmigrant religious worker from March of 2009 until February of 2014; a payroll information sheet for 2012-2013; copies of paystubs; and tax documentation.

The Director issued a request for evidence (RFE) stating, among other things, that the record showed the petitioning organization paid the Beneficiary less than it stated it would. The Director requested a detailed explanation for why the Beneficiary worked less than full time and was paid less than what had been promised. In response to the RFE, the Petitioner submitted a letter from [REDACTED] the school's principal, who explained that the Beneficiary "was a part time Hebrew teacher working

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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approximately 20 hours a week and was paid \$1,083 a month.” According to [REDACTED] the Beneficiary “became a full time worker as of December 26, 2012[, and] works 35 hours a week, for a 10 month school year, and is paid \$2,600 a month.” She explained that the Beneficiary’s contract was revised, giving her additional hours and a higher salary. The Director denied the petition, concluding that the Petitioner had not established that the Beneficiary had the required two years of full-time religious work experience.

On appeal, the Petitioner argues that the Beneficiary was “essentially” a full-time employee during the requisite two-year time period. According to the Petitioner, although the Beneficiary was in the classroom only 20 hours per week, she spent at least an additional 15 to 20 hours per week developing lesson plans, performing administrative duties, and meeting with other teachers and parents. In support of its assertion that teachers spend a significant amount of time working outside of the classroom, the Petitioner submits excerpts of an agreement between the Board of Education of the City School District of the [REDACTED] and the [REDACTED] as well as the highlights of a tentative agreement between the [REDACTED] and the [REDACTED]. The Petitioner argues, alternatively, that even if the Beneficiary did not work full time, the Act and implementing regulations do not explicitly require that previous work experience be full time.

We have reviewed all of the evidence in the record. As explained below, we find that the Petitioner has not established that the Beneficiary has the requisite two years of continuous religious work experience (i.e., from March 15, 2011, until March 15, 2013).

III. ANALYSIS

The record does not support the Petitioner’s argument that the Beneficiary ever worked full time during the two-year time period. As [REDACTED] stated in response to the RFE the Beneficiary worked approximately 20 hours a week. The record supports this contention, showing that the Beneficiary worked only part time and earned the corresponding part-time salary. On the Petitioner’s initial Form I-129, Petition for a Nonimmigrant Worker (receipt # [REDACTED], filed on July 18, 2008, the Petitioner indicated that the Beneficiary would work 30 hours per week for a salary of \$25,000 per year. On its second Form I-129 (receipt # [REDACTED], filed on July 11, 2011, which sought to extend the Beneficiary’s R-1 nonimmigrant status, the Petitioner decreased her hours to 20 hours per week, indicating it would compensate her \$270 per week (the equivalent of \$14,040 per year). Both nonimmigrant petitions were approved, granting the Beneficiary R-1 status to work part-time from March of 2009 through February of 2014.

Moreover, according to the Beneficiary’s IRS Form W-2, Wage and Tax Statement, in 2011 and 2012, the Petitioner paid the Beneficiary wages of \$10,183 and \$9,838, respectively. As such, it appears that either the Beneficiary worked fewer hours than had been indicated on the nonimmigrant petitions, or the Petitioner paid her less than it claimed it would. Furthermore, the financial documents in the record do not support the Petitioner’s contention that the Beneficiary began working full time beginning on December 26, 2012, for a salary of \$2,600 a month. According to a

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copy of her January 2013 paystub in the record, she earned a total of \$1,557 (including overtime) for the month, of which \$1,105 was regular earnings. This paystub matches the Beneficiary's September, October, November, and December 2012 paystubs, all of which indicate the same regular earnings of \$1,105 per month. As such, the paystubs in the record do not support the assertion that the Beneficiary began working full time for additional compensation beginning on December 26, 2012. Although the Petitioner stated in its response to the RFE that "[t]he new salary will [be] reflect[ed] on the upcoming 2013 tax return," to date, the petitioning organization has not submitted any financial or tax documents for 2013.

The agreement between the Board of Education in [REDACTED] with the [REDACTED] and the tentative agreement with a teachers' union in [REDACTED] provide minimal probative value to the instant case. The Petitioner has not shown how these documents are applicable specifically to the Beneficiary and they do not establish that she worked an additional 15-20 hours per week outside of the classroom as claimed.

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.

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. Pohns*, 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 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). Furthermore, it is incumbent upon the Petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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Considering the record in its entirety, the Petitioner has not established by a preponderance of the evidence that the Beneficiary met the full-time, qualifying work experience requirement for the requisite two-year time period.

IV. CONCLUSION

The Petitioner has not established that the Beneficiary has the required two years of qualifying religious work experience.

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 Y-S-T- Inc.*, ID# 73105 (AAO Sept. 28, 2016)