U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-N-

DATE: JUNE 3, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner is a Christian ministry. It seeks to hire the Beneficiary, a Canadian citizen who has been working as a missionary in South Korea for the past two years, as a nonimmigrant religious worker[1] to perform services as a chaplain. The Director of the California Service Center denied the petition, finding that the Petitioner did not establish its intent to compensate the Beneficiary or that she would be employed in a religious occupation as defined by the regulations. We dismissed the appeal, concluding that although the Petitioner established the Beneficiary would be employed in a religious occupation, it did not establish the intent to compensate. Specifically, we found that the Petitioner did not show the Beneficiary would be financially self-supporting and part of a program for temporary, uncompensated, missionary work as required.

The matter is now before us on a motion to reopen and a motion to reconsider. In its motions, the Petitioner submits additional evidence regarding its missionary programs abroad and the Beneficiary's financial status. We will grant the motion to reopen and sustain the appeal.

I. RELEVANT LAW AND REGULATIONS

A motion to reopen must state the new facts to be provided and to be supported by affidavits or other documentation. 8 C.F.R. § 103.5(a)(2). However, any new facts must relate to eligibility at the time the Petitioner filed the petition. *See* 8 C.F.R. § 103.2(b)(1), (12); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A motion to reconsider must offer the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider is based on the existing record and the Petitioner may not introduce new facts or new evidence relative to his or her arguments. A motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new materials. *Compare* 8 C.F.R. § 103.5(a)(3) *and* 8 C.F.R. § 103.5(a)(2).

[1] *See* Immigration and Nationality Act (the Act) section 101(a)(15)(R), 8 U.S.C. § 1101(a)(15)(R). This classification allows non-profit religious organizations, or their affiliates, to temporarily employ foreign nationals as ministers or in other religious occupations or vocations in the United States.

The regulation at 8 C.F.R. § 214.2(r)(11)(ii) addresses self-support and states:

> (A) If the alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination.
>
> (B) An established program for temporary, uncompensated work is defined to be a missionary program in which:
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> > (1) Foreign workers, whether compensated or uncompensated, have previously participated in R-1 status;
> >
> > (2) Missionary workers are traditionally uncompensated;
> >
> > (3) The organization provides formal training for missionaries; and
> >
> > (4) Participation in such missionary work is an established element of religious development in that denomination.
>
> (C) The petitioner must submit evidence demonstrating:
>
> > (1) That the organization has an established program for temporary, uncompensated missionary work;
> >
> > (2) That the denomination maintains missionary programs both in the United States and abroad;
> >
> > (3) The religious worker's acceptance into the missionary program;
> >
> > (4) The religious duties and responsibilities associated with the traditionally uncompensated missionary work; and
> >
> > (5) Copies of the alien's bank records, budgets documenting the sources of self-support (including personal or family savings, room and board with host families in the United States, donations from the denomination's churches), or other verifiable evidence acceptable to USCIS.

II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, on September 3, 2014. It described itself as a Christian ministry that ministers to people "on the margins of society," such as inmates, ex-offenders, and the homeless. It stated it trains Christian ministry workers around the world and has sites in Honduras, the United Kingdom, France, and South Korea. According to the

Petitioner, the Beneficiary has worked at its partner church in South Korea for the past two years as a missionary. It seeks to hire the Beneficiary as a chaplain to perform, among other things, street evangelism and jail ministry. It stated that she will raise her own personal support, as do all other staff members.

The Director issued a request for evidence (RFE), stating, among other things, that if the Beneficiary will be self-supporting, the Petitioner must show the proffered position is part of an established program for temporary, uncompensated, missionary work. The Director clarified that the missionary work must be part of a broader international program of missionary work sponsored by the denomination. She requested, in part, evidence that the denomination maintains missionary programs in the United States and abroad, copies of the Beneficiary's bank records, and budgets documenting the sources of self-support. In response to the RFE, the Petitioner submitted documents including, but not limited to: a copy of the Petitioner's budget which includes line items for "Honduras expenses;" a copy of the Beneficiary's bank account statement; letters from employees; the Petitioner's bylaws; and the Petitioner's vision statement, referencing its ministry in Honduras.

The Director denied the petition, concluding that the duties of the position were secular and primarily administrative in nature. Regarding compensation, the Director stated that the Petitioner's budget did not show its ability to compensate the Beneficiary for her services and that its assertion that the Beneficiary would support herself financially like all other staff members was contradicted by a letter in the record claiming the organization had twenty paid staff members.

On appeal, the Petitioner clarified that its employees raise funds as donations, which the organization then pays to its missionaries. It submitted additional documents – including a letter from its accountant, budgets, and tax documents – in support of its contentions that raising one's own financial support is standard practice for mission agencies around the world and is a form of ministry in and of itself.

We dismissed the appeal. We found that although the Petitioner established that the proffered position qualifies as a religious occupation, it did not establish that the Beneficiary will be financially self-supporting, as required under the regulations. For instance, we stated that the Petitioner did not show that the proffered position is a component of an established program for missionary work that is part of the Petitioner's broader international program of missionary work, one of several requirements under 8 C.F.R. § 214.2(r)(11)(ii).

The matter is now before us on motions to reopen and reconsider. The Petitioner argues that it does, in fact, have a missionary program abroad and that the Beneficiary is able to financially support herself during her employment. It submits, among other things: a letter from its executive director; printouts from its website highlighting its ministries in Honduras and Europe; an updated letter from the Beneficiary; and additional financial documents.

III. ANALYSIS

A. Motions

The Petitioner's submission meets the requirements of a motion to reopen at 8 C.F.R. § 103.5(a)(2). The Petitioner submits additional documentation in support of its contention that it meets the regulatory requirements of 8 C.F.R. § 214.2(r)(11)(ii). Accordingly, the motion to reopen is granted. Because the motion to reopen is granted, the motion to reconsider is moot.

B. Compensation

After considering all of the evidence, including the documents submitted on appeal, we find that the Petitioner has met the requirements at 8 C.F.R. § 214.2(r)(11)(ii) to establish that the Beneficiary will support herself financially during her temporary period of employment as a religious worker in the United States. A letter submitted with the motion from the Petitioner's executive director, clarifies that the petitioning organization has had a missionary program in Honduras since 1982, has a missionary presence in the United Kingdom, and conducts missionary work in the United States. He asserts that all of its missionaries raise their entire salary, which is kept in separate accounts and used by the Petitioner to pay their salaries. specifies that the Beneficiary will raise her own salary of $24,000, which far exceeds her expenses. He explains that the staff handbook in the record and other evidence previously submitted did not discuss its missionary programs abroad because they were aimed at an audience in North America.

Documentation submitted with the motion supports contentions. Printouts from the Petitioner's website show that the petitioning organization has had a "partner ministry" in Honduras since the 1980s. Several pages of the website are dedicated to describing the work of each of its missionaries, including the Beneficiary, and contain separate links in order for donors to contribute funds to a particular individual. A new profit and loss statement shows how much money each missionary has raised towards their salary. An updated letter from the Beneficiary submitted with the motion states that she has donors from Korea, Canada, and the United States, as well as generous support from her family. She explains that her expenses are negligible and that one of her supporters provides her with free housing. She submits a budget showing that her expenses are less than $1,000 per month. In addition, she submits a letter from one of her financial supporters confirming the Beneficiary has free lodging as part of her missionary work.

We consider this new evidence in conjunction with documents already in the record. According to initial letter submitted with the petition, the Petitioner has sites in Honduras, the United Kingdom, France, South Korea, and the United States. As he stated initially, the Beneficiary successfully completed the petitioning organization's apprenticeship program and will raise her own personal support, like all other staff members. In addition, the Petitioner's profit and loss statement submitted in response to the RFE includes line items for "Honduras expenses." Many of the 2014 IRS Forms W-2, Wage and Tax Statements, in the record were issued to missionaries who are listed on the profit and loss statement the Petitioner now submits with its motion. The record also contains a letter from the associate director of and a leader of

According to the Petitioner's funding model in which individual missionaries are responsible for recruiting individual donors as part of their religious work "has a long and honored history in the United States and is the primary way missionaries and religious workers are funded."

Considering the record in its entirety, we find that the Petitioner has sufficiently established that the Beneficiary will be self-supporting during her temporary employment in the petitioning organization's established missionary program, as required by 8 C.F.R. § 214.2(r)(11)(ii). Our previous decision to the contrary is withdrawn.

IV. CONCLUSION

The Petitioner has established that the Beneficiary will be self-supporting during her employment.

In visa petition proceedings, it is the Petitioner's 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). Here, that burden has been met.

ORDER: The motion to reopen is granted and the appeal is sustained.

Cite as *Matter of T-N-*, ID# 16587 (AAO June 3, 2016)