



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

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

MATTER OF G-O-P-I-C-, INC.

DATE: SEPT. 21, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner is a church that seeks to employ the Beneficiary as a pastor. This nonimmigrant religious worker 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. See Immigration and Nationality Act (the Act) § 101(a)(15)(R), 8 U.S.C. § 1101(a)(15)(R).

The Director of the California Service Center denied the petition, finding that the Petitioner was not eligible for the benefit sought because the Beneficiary signed the petition. We dismissed the appeal, concluding that the evidence did not establish that the petitioning organization authorized the Beneficiary to petition for himself on its behalf. Quoting the Federal Register, we stated that nonimmigrant aliens may not self-petition for R-1 status and found that the Beneficiary cannot circumvent this requirement by simply signing the petition on the church's behalf.

The matter is now before us on motions to reopen and to reconsider. The Beneficiary submits a letter explaining that he signed the petition because his church in Brazil founded the petitioning organization under its authority. He states that because the petitioning organization is a new church, "the church's social contract was made under [his] name" and is under his responsibility. He submits additional documentation in support of the motions.

Upon *de novo* review, we will deny the motions.

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

(b)(6)

Matter of G-O-P-I-C-, Inc.

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).

II. PERTINENT FACTS AND PROCEDURAL HISTORY

As our previous decision explained, the religious worker petition, which identified the Petitioner as [REDACTED] in Florida, was signed by the Beneficiary. The record included documents showing that the church is incorporated in the State of Florida and its articles of incorporation listed the Beneficiary as the registered agent for the corporation, a member of the board of directors, and the incorporator. We noted in our decision that the Beneficiary's wife and son were listed as the two other board members. We concluded that there was no documentation showing that the church authorized the Beneficiary to petition for himself on its behalf and denied the appeal accordingly.

Currently, the Beneficiary submits a letter and documents from Brazil. He explains that he was sent to the United States in June of 2010 by [REDACTED] from his church in Brazil. The Beneficiary states that the petitioning organization was founded in July of 2010 "under the authority of the [REDACTED] and under [the Beneficiary's] responsibility, and because it was a new church, in a foreign country, and without a member list, the church's social contract was made under [the Beneficiary's] name, and [his] family's name." He further contends that the "main church in Brazil trusted [them] with the responsibility to take care of the American church." The Beneficiary submits four documents from [REDACTED] a member certificate, a pastor's certificate, a declaration, and a power of attorney.

III. ANALYSIS

A. Motions

In his initial statement submitted with the petition, the Beneficiary stated that he was sent to the United States to establish the petitioning organization, which is affiliated with his church in Brazil. Currently, the Beneficiary submits additional documentation in support of his contention that the church in Brazil granted him the authority to found and manage the petitioning organization.

The Petitioner has not cited to any pertinent precedent decisions or contend that our previous decision was based on an incorrect application of law or USCIS policy. Therefore, the Petitioner's submission does not meet the requirements of a motion to reconsider. However, we do find that the new evidence submitted with the motion suffices to meet the requirements of a motion to reopen.

B. Signatory of the Petition

The Beneficiary submits a declaration from Pastor Arapiraca which states that the Beneficiary "was sent to the United States of America, in June of 2010 through the [REDACTED] [(Brazil church)], and is authorized to establish [REDACTED]"

Matter of G-O-P-I-C-, Inc.

_____ as this church is linked to ours.” In addition, the Beneficiary submits a power of attorney, signed by _____ identifying the “granter” as _____ and the “granted” as the Beneficiary. This power of attorney grants the Beneficiary “broad powers” to represent the petitioning organization before government entities as well as “notaries, board of trade, private entities, and where else it becomes necessary, requiring certificates and examining processes, paying taxes, fees, costs, and charges, receiving and presenting documents, signing statements and receipts, [and] moving bank accounts. . . .”

Despite _____ declaration and the power of attorney form, for several reasons, the record continues to lack sufficient evidence that the petitioning organization authorized the Beneficiary to petition for himself on its behalf. First, the record does not show that the petitioning organization is, in fact, affiliated with, or a subordinate of, the church in Brazil. Chapter III of the Brazil church’s bylaws in the record discusses affiliated churches. Article XVII specifies that a church that becomes an affiliate is “linked and subordinated with this Statute, by an Extraordinary General Meeting, held at the Ministry, the event should be entered in the appropriate minutes [sic].” Here, there is no evidence there was any meeting to render the petitioning church an affiliate or subordinate. Similarly, Article XVIII states that “[a]ll real estate, furniture, vehicles or belongings of subsidiaries as well as any cash in fact belong in fact and law to the _____” However, the petitioning church’s bylaws uses identical language to state the opposite, “[a]ll real estate, furniture, vehicles or belongings of subsidiaries as well as any cash in fact belong in fact and law to the _____”

The Brazil church’s bylaws also address its control over the financial decisions of its affiliates. For instance, Article XX “forbids” affiliated churches from entering into or signing financial agreements, including “Liens, Bails, Endorsement, power of attorney, Surety, Sell capital assets, Sign like a notary in Minutes or Bylaws without written order of the Ministry _____ Article XXI requires affiliates to properly support all of its expenses and states that monthly financial reports should be submitted to the treasurer of the Brazil church. Article XXII dictates that the Brazil church “manage all financial movements and economic of the affiliates.”

However, the record shows that the petitioning organization has entered into rental agreements, opened bank accounts, and signed its own bylaws. There is no evidence that it first sought written permission from the Brazil church to enter into, and sign, these documents, as required by the Brazil church’s bylaws. There is also no indication that the Petitioner submits financial reports to the church in Brazil. Therefore, the evidence does not establish that the petitioning church is, or ever was, an affiliate or subordinate of the Brazil church as claimed.

Second, the record does not show that _____ granted the Beneficiary permission to file the petition on behalf of the Petitioner, or that he alone had the authority to do so. Although _____ granted “broad powers” to the Beneficiary, he did not expressly grant such authority with respect to immigration dealings or transactions before USCIS. In addition, according to Article V of the Brazil church’s bylaws, the administration of the Brazil church is exercised by a board which consists of a president, a vice-president, a first and a second secretary, and a first and second

(b)(6)

Matter of G-O-P-I-C-, Inc.

treasurer. [REDACTED] declaration and the power of attorney were signed by him alone, not by the board of directors.¹

Third, the record contains unexplained inconsistencies with respect to the bona fides of the petitioning organization. For instance, the record contains two different sets of bylaws for the petitioning church. The bylaws dated July 21, 2010 (Bylaws I) is titled, [REDACTED] Bylaws,” and contains six articles. Bylaws I makes no mention of the church in Brazil. Article VI addresses amendments and states:

The provisions of the Bylaws may be modified, altered, or amended by two-thirds majority vote of the members of the Board of Directors at a regular or special meeting. As soon as the proposed amendments have been adopted as herein provided, results of the vote shall be announced by the Pastor and declared adopted by the Chairman of the Board of Directors, whereupon such amendments shall be in full force of effect.

Despite this provision outlining the process required to amend or alter its bylaws, the record contains new bylaws dated January 5, 2013 (Bylaws II). In contrast to Bylaws I, Bylaws II includes “Ministry - [REDACTED] in its title, contains 35 articles, and states that [REDACTED] is subject to ecclesiastical authority of [REDACTED] . . .” There is no indication that the Petitioner followed its own process outlined in Bylaws I when it adopted a wholly new set of bylaws. The record does not include evidence that there was a vote of the Board of Directors or that there has ever been a Chairman of the Board of Directors. Instead, the record merely shows that the Beneficiary signed both sets of bylaws.

In addition, as we noted in our previous decision, the petitioning organization’s board of directors consists of only three individuals - the Beneficiary, his wife, and their son. In its statement initially submitted with the petition, the Petitioner indicated that the Beneficiary’s wife was the treasurer of the petitioning organization and that their son, identified as [REDACTED] was the secretary. It stated that the qualification for the position of treasurer was “Business Administration expertise,” and that a high school diploma was required to be secretary.

¹ Although issued after the petition was filed, we note that USCIS recently posted an Interim Policy Memorandum addressing signatures for benefit requests. See USCIS Interim Policy Memorandum PM-602-0134 *Signatures on Paper Applications, Petitions, Requests, and Other Documents Filed with U.S. Citizenship and Immigration Services* (June 7, 2016), https://www.uscis.gov/sites/default/files/USCIS/Outreach/Draft%20Memorandum%20for%20Comment/PED_SignatureRequirementPM.pdf. This memorandum requires that, effective June 21, 2016, all petitions “contain a statement by the person signing the request, affirming that he or she has the legal authority to file the request on the petitioning employer’s behalf, that the employer is aware of all of the facts stated in the request, and that such factual statements are complete, true, and correct.” *Id.* at 5. With respect to a power of attorney, the memorandum requires evidence that it was properly executed according to the laws of the governing jurisdiction. *Id.*

Matter of G-O-P-I-C-, Inc.

However, the documentation submitted with the petition indicates different positions for the Beneficiary's wife and son. According to the organizational chart, the Beneficiary's son, not wife, is listed as the treasurer. A description of job duties submitted with the petition also contends that the Beneficiary's son is the treasurer, not the Beneficiary's wife. Although the Petitioner stated that expertise in business administration was required for the position of treasurer, the Beneficiary's son is named as a derivative of the religious worker petition. The regulation at 214.2(r)(4)(ii) specifies that unmarried children under the age of 21 are permitted to be derivatives in R-2 status. Therefore, the record suggests that the Beneficiary's minor child is the treasurer of the petitioning organization. According to the job descriptions in the record, the Beneficiary's son is, therefore, responsible for overseeing the Petitioner's financial records, budgeting, preparing financial reports, and overseeing audits. There is no evidence he has any business administration expertise or is otherwise qualified to be the organization's treasurer.² As such, not only is the record inconsistent regarding which family member holds the position of treasurer vs. secretary, but also, it is unclear with respect to whether they are qualified for those positions.

Finally, the record includes a "Conflict of Interest Policy." The stated purpose of the policy is to protect the petitioning organization's interest when a transaction or arrangement might benefit the private interest of an officer or director of the organization. According to the policy, the interested person has a duty to disclose the possible conflict of interest and, thereafter, the individual "shall leave the governing board or committee meeting while . . . [t]he remaining board or committee members . . . decide if a conflict of interest exists." Here, the Beneficiary has signed his own religious worker petition on behalf of the petitioning church, a petition that would, if approved, confer lawful immigration status to the Beneficiary and his family. There is no evidence in the record to show that the Beneficiary (or his wife and son) has complied with the petitioning organization's conflict of interest policy. There are no documents indicating he has disclosed the possible conflict or that any church member in either the United States or in Brazil has considered or decided whether a conflict exists.

In sum, we find that the Beneficiary has not sufficiently established that he was authorized by the petitioning organization to sign the religious worker petition on the church's behalf. The record does not show that the petitioning organization is an affiliate or subordinate of the church in Brazil such that Pastor Arapiraca's authorization granting the Beneficiary certain powers is valid. In addition, the record contains unexplained inconsistencies raising doubts about the petitioning organization's bona fides, and there is no evidence the Beneficiary has complied with the petitioning organization's own conflict of interest policy. Accordingly, the Beneficiary, who signed the petition, has not established that he would be coming to or remaining in the United States at the request of the Petitioner to work for the petitioning organization, as required under 8 C.F.R. § 214.2(r)(1)(iv).

² When the petitioning organization's articles of incorporation were signed on July 5, 2011, the Beneficiary was [redacted] years old. There is no evidence in the record of the Beneficiary's son's date of birth. Although the "Exhibit List" in the record indicated that the Beneficiary's son's passport, visa, and birth certificate were being submitted, they are not in the record before us.

C. Compensation

Although not addressed in our previous decision, we further find that the record does not establish the petitioning organization's intent to compensate the Beneficiary \$43,200 per year as it claims it would. Its 2011 profit and loss statement in the record shows a net income of \$3,425 and there is no line item for any salaries. In 2012, the Beneficiary's IRS Form 1099-MISC, Miscellaneous Income, shows that the Petitioner paid him \$18,000 in nonemployee compensation, significantly less than the proposed salary of \$43,200. For the first three months of 2013, the Petitioner's bank account statements in the record show a balance of \$131, \$301, and \$558. These documents do not establish the Petitioner's intent and ability to pay the Beneficiary as promised.

The Beneficiary stated in his initial statement that if the Petitioner cannot meet the expenses of paying him, he "will support himself [by] withdraw[ing] funds as necessary from his bank account in Brazil." Although 8 C.F.R. § 214.2(r)(11)(ii) addresses beneficiaries who will be financially self-supporting, the record does not show that the Beneficiary will be 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, as required by the regulation. Therefore, regardless of whether he is willing to withdraw funds from his own bank account, the petitioning entity has not shown how it intends to compensate the Beneficiary, as required under 8 C.F.R. § 214.2(r)(11).

IV. CONCLUSION

For the reasons discussed above, the Beneficiary, who signed the petition, has not established that he would be coming to or remaining in the United States at the request of the Petitioner to work for the petitioning organization. In addition, the Petitioner has not sufficiently established its intent to compensate the Beneficiary.

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 not been met. Accordingly, the motions to reopen and reconsider are denied.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of G-O-P-I-C-, Inc.*, ID# 74019 (AAO Sept. 21, 2016)