



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

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

MATTER OF G-R-D-S-C-O-V-A-P-

DATE: APR. 5, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a Sikh temple, seeks to classify the Beneficiary as a nonimmigrant religious worker to perform services as a minister. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(R), 8 U.S.C. § 1101(a)(15)(R). This nonimmigrant classification allows non-profit religious organizations, or their affiliates, to temporarily employ foreign nationals as ministers, in religious vocations, or in other religious occupations in the United States.

The Director of the California Service Center denied the Form I-129, Petition for Nonimmigrant Worker, and we dismissed a subsequent appeal, finding the Petitioner had not established how it intends to compensate the Beneficiary. The matter is now before us on a motion to reopen and a motion to reconsider. On motion, the Petitioner submits additional evidence and asserts that it has shown how it will compensate the Beneficiary.

In December 2016, we issued a notice of intent to deny (NOID) the motions and a request for evidence (RFE), to which the Petitioner has since responded. Upon review, we will deny the motions.

I. LAW

Non-profit religious organizations may petition for foreign nationals to work in the United States for up to five years to perform religious work as ministers, in religious vocations, or in other religious occupations. The petitioning organization must establish that the foreign national beneficiary has been a member of a religious denomination for at least the two-year period before the date the petition is filed. *See generally* section 101(a)(15)(R) of the Act, 8 U.S.C. § 1101(a)(15)(R).

A motion to reopen is based on documentary evidence of *new facts*, and a motion to reconsider is based on an *incorrect application of law or policy*. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

For the reasons discussed below, we find that both the Petitioner and the Beneficiary have sought to procure an immigration benefit through willful misrepresentation of a material fact. We further find that the Petitioner has not overcome our appellate findings relating to compensation.

A. Willful Misrepresentation

Section 212(a)(6)(C) of the Act provides:

Misrepresentation.-

- (i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

For an immigration officer to find a willful material misrepresentation in a visa petition proceeding, the officer must determine that a beneficiary or a petitioner: (1) procured, or sought to procure, a benefit under U.S. immigration laws; (2) willfully made a false representation to a U.S. government official, generally an immigration or consular officer; and (3) the false representation was material. *Matter of Y-G-*, 20 I&N Dec. 794, 796 (BIA 1994).

The Petitioner signed the petition, thereby certifying under penalty of perjury “that all of the information contained in the petition, including all responses to specific questions, and in the supporting documents, is complete, true, and correct.”¹ While adjudicating the motions, information came to light that compromises the credibility of the Petitioner’s claims.

Within the petition, the Petitioner attested that the Beneficiary was qualified for the position as required under 8 C.F.R. § 214.2(r)(8)(ii). As supporting evidence of the Beneficiary’s qualifications for the position and his denominational membership, the Petitioner provided a May 2015 letter, written in English, and identified as being from the [REDACTED] in [REDACTED] India. The letter stated that the Beneficiary worked for [REDACTED] in a compensated position from December 2012 through May 2015. On September 8, 2016, an officer from U.S. Citizenship and Immigration Services (USCIS) visited the gurudwara and spoke to its president, [REDACTED] who stated that [REDACTED] never employed the Beneficiary, and that he did not write the experience letter. [REDACTED] also indicated that he is the only person authorized to sign material on the gurudwara’s letterhead, that he does not read or write in the English language, and that he would therefore not be able to comprehend the contents of the experience letter.

¹ See the Form I-129 at Part 7.

Our NOID included this information, and noted that it appeared to indicate the Petitioner presented a document in support of the petition that was not true and correct.² Responding to our NOID, the Petitioner offers an affidavit from the Beneficiary in which he asserts that [REDACTED] gave a false statement to the USCIS officer. The Beneficiary further claims that he worked at the [REDACTED] until December 2, 2014, when he left India to work in Canada.

In support the Beneficiary's assertions, the Petitioner submits a January 2017 foreign language letter purportedly from [REDACTED] and signed by [REDACTED]. According to an accompanying translation, the letter states that the Beneficiary did serve [REDACTED] from 2012 through May 2015, and that he was on leave in Canada for a portion of that time. It further asserts that [REDACTED] did not tell the investigating officer that the Beneficiary never worked at the gurudwara, but "there may be some loose talk on [REDACTED] part" as he could not hear the questions because of local construction noise. The Petitioner also furnished a letter in English from [REDACTED] granting him permission to take leave to work in Canada, an invitation letter from the Canadian temple inviting the Beneficiary for a six-month visit, a copy of his Canadian work visa, a resignation letter addressed to [REDACTED] and photocopies of several foreign language news articles. The Beneficiary argues that the news articles show his activities at [REDACTED] including photographs of himself with [REDACTED].

We find the Petitioner's response insufficient to overcome the findings of the site visit or to resolve the inconsistencies in the record regarding the Beneficiary's experience letter. The Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.* In this instance, the Petitioner has not specifically addressed the issue of [REDACTED] testimony that he did not and could not have written the experience letter that was attributed to him. The January 2017 letter from [REDACTED] is not sufficiently credible or probative to outweigh his testimony to the investigating officer, nor does it include any assertion that he did in fact write the earlier experience letter. While the letter asserts factors that made communication difficult, it does not provide specific explanations for the statements that [REDACTED] made during the interview.

Furthermore, while the Petitioner asserts that the Beneficiary did serve [REDACTED] during the period discussed in the experience letter, the record does not include sufficient documentary evidence to support that assertion. The submitted resignation letter is written by the Beneficiary, and therefore does not constitute confirmation from [REDACTED] that he worked at the gurudwara, nor does it provide the dates of any such employment. Further, the Canadian temple's invitation letter is not probative documentation demonstrating the Beneficiary worked at [REDACTED] during the period in question. This letter does not mention [REDACTED] or indicate where the Beneficiary was working on the date the letter was drafted, nor does his Canadian work visa reflect his employment at the gurudwara. While the Petitioner submitted a July 9, 2014, English language letter on [REDACTED] letterhead granting the

² We note that the Petitioner submitted a virtually identical letter in support of a petition on behalf of another beneficiary.

Beneficiary permission to take leave to work in Canada, we question the validity of this letter as [REDACTED] indicated that he is the only person authorized to sign material on the gurudwara letterhead, and that he does not read or write in English. We also note that evidence of the Beneficiary's employment in Canada conflicts with previous statements and documentation indicating that he was working at [REDACTED] through May 2015.

With regard to the submitted foreign language news articles, the Petitioner did not provide complete and certified translations, but instead included an English explanation of each article. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit a properly certified English language translation of the document, we cannot meaningfully determine whether the translated material is accurate and thus supports its claims.

Finally, we conclude that the Petitioner's and the Beneficiary's false representations were material. A "material" misrepresentation is a false representation concerning a fact that is relevant to eligibility for an immigration benefit. The U.S. Supreme Court has developed a test to determine whether a misrepresentation is material, finding that a concealment or a misrepresentation is material if it has a natural tendency to influence, or was capable of influencing the decisions of the decision-making body. *See Kungys v. United States*, 485 U.S. 759, 770 (1988). USCIS reviewed and relied upon the Beneficiary's experience letter to satisfy the regulatory requirements relating to his qualifications and his denominational membership. Consequently, the submission of his experience letter containing false information has a natural tendency to influence a USCIS decision, and is capable of influencing such a decision. We therefore determine that the letter satisfies both of the materiality tests as described in *Kungys*.

For the reasons discussed above, we find that both the Petitioner and the Beneficiary have sought to obtain an immigration benefit by willful misrepresentation of a material fact. We informed the Petitioner that it must resolve the derogatory information described above with independent, objective evidence pointing to where the truth lies. *Ho*, 19 I&N Dec. at 591-92. Although the Petitioner responded with evidence, it has not offered probative materials that have resolved the adverse information in its favor.

B. Compensation

The Petitioner is required to submit evidence to establish how it intends to compensate the Beneficiary. The regulation at 8 C.F.R. § 214.2(r)(11) provides:

Evidence relating to compensation. Initial evidence must state how the petitioner intends to compensate the alien, including specific monetary or in-kind compensation, or whether the alien intends to be self-supporting. In either case, the petitioner must

submit verifiable evidence explaining how the petitioner will compensate the alien or how the alien will be self-supporting. Compensation may include:

- (i) *Salaried or non-salaried compensation.* Evidence of compensation 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. IRS [Internal Revenue Service] documentation, such as IRS Form W-2 [Wage and Tax Statement] or certified tax returns, must be submitted, if available. If IRS documentation is unavailable, the petitioner must submit an explanation for the absence of IRS documentation, along with comparable, verifiable documentation.

The Director concluded that the Petitioner did not show how it intends to compensate the Beneficiary. On appeal, the Petitioner submitted financial materials and bank account statements that differed from previously offered evidence, which had reflected a deficit of funds. As an explanation for the change in balances, the Petitioner provided a letter from an accountant stating that members of the temple converted loans each person made to the church into contributions or donations totaling \$130,000. In our appellate decision, we found that the Petitioner did not offer material to corroborate the accountant's letter. We also determined that the Petitioner's evidence of past compensation for similar positions was insufficient. The appeal decision identified other issues related to donations from temple members meant for the priests, and compensation for all three nonimmigrant religious workers. Finally, we found that the Petitioner provided insufficient documentation demonstrating the Beneficiary received room and board. We determined that, based on these combined shortcomings, the Petitioner did not establish how it intended to compensate the Beneficiary.

On motion, the Petitioner provided a May 2016 bank statement and a brief indicating that it was unable to provide compensation evidence for past positions. As questions remained regarding how the Petitioner intends to compensate the Beneficiary, we issued an RFE.

In response to our RFE, the Petitioner clarifies that it will pay the Beneficiary \$800 per month, and it will provide him with room, board, and transportation. However, the Petitioner has not submitted sufficient verifiable evidence, as required under 8 C.F.R. § 214.2(r)(11), to demonstrate how it will provide the salaried compensation. The Petitioner's most recent financial material on record, dated August 2015, is titled "Monthly Accounting – Internal Use Only," and is not accompanied by evidence indicating it is an audited financial statement. Without items to support the information in the monthly accounting document, the Petitioner's unaudited financial statements do not constitute verifiable evidence of how it will compensate the Beneficiary. Regarding the banking documents, we informed the Petitioner in our RFE that the banking statement it offered with the motion was not sufficient without additional evidence. We noted that it did not show an availability of sufficient funds over a sustained period of time to cover the Beneficiary's wages in addition to other expenses. The Petitioner's response includes banking documents for its checking and its money market

accounts covering multiple months in 2016. Although the banking statements reflect an average monthly balance sufficient to cover the Beneficiary's compensation, as detailed below, the record lacks information relating to the Petitioner's financial obligations to its other employees.

In our RFE, we informed the Petitioner that it must demonstrate it can compensate each beneficiary for whom it has filed a petition, in addition to the temple's other ongoing expenses. We requested that the Petitioner clarify the rate that it intends to pay to each of its foreign national religious workers. The number of other employees is relevant to determine whether the available funds are sufficient to provide the offered compensation to this Beneficiary.³ However, the Petitioner did not offer a response to our request. Accordingly, this limits our ability to determine whether the Petitioner has shown how it will compensate all its staff members, including the Beneficiary. Without this information, the Petitioner has not met its burden of proof.

In addition, the Petitioner has not clarified the arrangement used to distribute temple donations to its priests. The Petitioner indicated that the Beneficiary will receive donations from the temple's members. We requested that the Petitioner provide a statement clarifying whether these donations are included in the Beneficiary's stated salary, or are in addition to it. Furthermore, we requested the Petitioner offer probative and verifiable evidence of the manner in which the funds are distributed to each priest. The Petitioner did not offer a response to our request.

Finally, the Petitioner has not sufficiently resolved the above-noted issue regarding member loans that were converted into contributions. As the accountant's letter was not verifiable evidence of the members' loans being converted, our RFE requested that the Petitioner submit additional material to substantiate the accountant's claim. Specifically, we requested a letter from each temple member with information about his or her loan and its conversion, or other material to sufficiently corroborate the debt forgiveness. The Petitioner responded with a document titled "Transactions by Account," which reflects a zero dollar balance on loans from the temple's members,⁴ but the Petitioner has not established that the document constitutes verifiable evidence pertaining to its debt. The Petitioner also provides a letter from [REDACTED] asserting that the eight temple members who had previously loaned the temple \$130,000 forgave the debt and converted the loans into donations or contributions. While [REDACTED] was one of the eight congregants listed, his claims pertaining to the other converted loans are not corroborated by probative evidence. Statements made without supporting documentation are of limited probative value and are insufficient to satisfy the Petitioner's burden of proof. As the record is insufficient to establish that the congregants converted their loans to contributions, the Petitioner has not fully resolved the financial discrepancies noted in our appellate decision.

³ *Cf. Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014) (upholding the denial of a petition in a different classification where a petitioner did not demonstrate how it would pay the combined offered wages of multiple beneficiaries).

⁴ We note that information on the "Transactions by Account" document itself conflicts with this zero dollar balance as it reflects that two members have not provided paperwork on converting their loans.

III. CONCLUSION

The Petitioner and Beneficiary have sought to procure an immigration benefit through willful misrepresentation of a material fact. Further, the Petitioner has not sufficiently demonstrated how it intends to compensate the Beneficiary.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of G-R-D-S-C-O-V-A-P-*, ID# 13831 (AAO Apr. 5, 2017)