U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20054829

Date: FEB. 28, 2022

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Special Immigrant Religious Worker

The Petitioner, a church, seeks to classify the Beneficiary as a special immigrant religious worker to perform services as a "lead pastor." *See* Immigration and Nationality Act (the Act) Section 203(b)(4), 8 U.S.C. § 1153(b)(4). This immigrant classification allows non-profit religious organizations, or their affiliates, to employ foreign nationals as ministers, in religious vocations, or in religious occupations in the United States. *See* Section 101(a)(27)(C)(ii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii).

The Director of the California Service Center denied the petition, finding that the Petitioner did not submit verifiable evidence of how it intended to compensate the Beneficiary. *See* 8 C.F.R. § 204.5(m)(10) (2019). We dismissed the appeal, explaining that the Petitioner did not establish, by a preponderance of the evidence,[1] its eligibility to classify the Beneficiary as a special immigrant religious worker, because it did not satisfy the compensation requirements specified under 8 C.F.R. § 204.5(m)(10).

The matter is now before us on a motion to reconsider. Upon review, we will dismiss the motion. *See* 8 C.F.R. § 103.5(a)(3).

I. LAW

A motion to reconsider must establish that our prior decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy and that the prior decision was incorrect based on the evidence in the record of proceedings at the time we issued the decision. 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.

As noted in our previous decision, foreign nationals who perform full-time, compensated religious work as ministers, in religious vocations, or in religious occupations for non-profit religious

[1] In these proceedings, it is the Petitioner's burden to establish, by a preponderance of the evidence, its eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012); *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). If a petitioner submits relevant, probative, and credible evidence that leads us to believe that the claim is "more likely than not" or "probably" true, it has satisfied the preponderance of the evidence standard. *Chawathe*, 25 I&N Dec. at 375-76.

organizations in the United States may be classified as special immigrant religious workers. The petitioner 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. *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)(ii) of the Act).

In addition, the regulation at 8 C.F.R. § 204.5(m)(10) specifies that a petitioner must submit compensation related evidence, stating:

> Evidence relating to compensation. Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence 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. If IRS [Internal Revenue Service] documentation, such as IRS Form W-2 [Wage and Tax Statement] or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

8 C.F.R. § 204.5(m)(10).

II. ANALYSIS

In our previous decision, we explained that the Petitioner failed to submit verifiable evidence of how it intended to compensate the Beneficiary, as required under 8 C.F.R. § 204.5(m)(10). The Petitioner claimed that it would provide the Beneficiary $3,000 a month or $36,000 a year in salary and housing benefits. The documentation in the record, including financial documents and bank records, however, was insufficient to confirm that the Petitioner had enough funds to compensate the Beneficiary at a level specified in the petition. In addition, we noted in our decision that there were inconsistencies concerning the Petitioner's expenses in 2019 and 2020, as its financial statements did not reflect it had compensated the Beneficiary, even though he was working as its pastor. Finally, we acknowledged the Petitioner claimed on appeal that in 2019, it donated to [redacted] and incurred expenses that "[were] not recurrent," but we explained that unsubstantiated claims that it would make different financial decisions in the future did not constitute verifiable evidence, required under 8 C.F.R. § 204.5(m)(10). Based on these reasons, we concluded that the record did not support a finding that the Petitioner had submitted verifiable evidence of how it intended to compensate the Beneficiary. *See id.*

On motion, the Petitioner's vice president submits an August 2021 statement addressing the issues we discussed in our appellate decision. The statement resolves one of the issues. Specifically, it reconciles the inconsistencies concerning the Petitioner's expenses in 2019 and 2020. The Petitioner explains on motion that its financial statements did not reflect its compensation to the Beneficiary, because [redacted] not the Petitioner, paid the Beneficiary's salary and housing benefits.

While the motion filing resolves the inconsistencies concerning the Petitioner's 2019 and 2020 expenses, it does not resolve the remaining issues we raised in our appellate decision. In its attempt to explain the low cash balances in its accounts, the August 2021 statement claims that the Petitioner does not "accumulate funds in a bank account with so many people in need around us," and that in the past, it has "asked our members to donate the funds when a necessity arises." The statement also states, as the Petitioner had alleged on appeal, that the petitioning entity's "contribution [to [redacted]] is not obligatory, and is not a priority," and that it would have sufficient funds to compensate the Beneficiary without these contributions.

As discussed in our appellate decision, under the regulation, the Petitioner must submit "verifiable evidence of how [it] intends to compensate the alien." 8 C.F.R. § 204.5(m)(10). The Petitioner has not provided documentation referenced in the regulation. For example, the Petitioner has not offered "past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; [or] verifiable documentation that room and board will be provided." *Id.* Additionally, the Petitioner has not demonstrated that its claims that it can raise funds from its members and that it will make different financial decisions in the future constitute "verifiable evidence of how [it] intends to compensate the [Beneficiary]." 8 C.F.R. § 204.5(m)(10). Speculation of future revenues and expenses is not verifiable evidence. Based on these reasons, the motion does not support a finding that the record contains verifiable evidence of how the Petitioner intends to compensate the Beneficiary. *See* 8 C.F.R. § 204.5(m)(10).

III. CONCLUSION

The Petitioner has failed to establish that our previous decision was based on an incorrect application of law or USCIS policy and that our prior decision was incorrect based on the evidence then before us. *See* 8 C.F.R. § 103.5(a)(3). Accordingly, we will dismiss its motion to reconsider the matter.

ORDER: The motion to reconsider is dismissed.