



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

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

In Re: 20262418

Date: FEB. 28, 2022

Motion on Administrative Appeals Office Decision

Form I-129, Petition for Nonimmigrant Worker (Religious Worker – R-1)

The Petitioner, a Sikh Temple, seeks to classify the Beneficiary as an R-1 nonimmigrant religious worker to perform services as a priest. *See* Immigration and Nationality Act (the Act) Section 101(a)(15)(R), 8 U.S.C. § 1101(a)(15)(R). The nonimmigrant R-1 classification allows non-profit religious organizations, or their affiliates, to temporarily employ foreign nationals as ministers, in religious vocations, or in religious occupations in the United States.

The Director of the California Service Center denied the petition. We then dismissed the appeal, concluding that the Petitioner did not submit sufficient documentation confirming that the Beneficiary would likely work as a religious worker according to the terms of employment specified in the petition or work on average at least 20 hours per week as required under 8 C.F.R. § 214.2(r)(1)(ii) (2019).

The matter is now before us on combined motions to reconsider and reopen the proceeding. In these proceedings, it is the Petitioner's burden to establish 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).¹ Upon review, we will dismiss the motions.

I. LAW

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

In addition, 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 religious occupations. The petitioning organization must establish, among other requirements, that the foreign

¹ 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.

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 C.F.R. § 214.2(r).

Specifically, the regulation at 8 C.F.R. § 214.2(r)(1) explains:

To be approved for temporary admission to the United States, or extension and maintenance of status, for the purpose of conducting the activities of a religious worker for a period not to exceed five years, an alien must:

- (i) Be a member of a religious denomination having a bona fide non-profit religious organization in the United States for at least two years immediately preceding the time of application for admission;
- (ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week);
- (iii) Be coming solely as a minister or to perform a religious vocation or occupation . . . ;
- (iv) Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and
- (v) Not work in the United States in any other capacity

II. ANALYSIS

A. Motion to Reconsider

In our previous decision, we explained that the record did not support a finding that the Beneficiary would, more likely than not, work as a religious worker according to the terms of employment specified in the petition or work on average at least 20 hours per week as required under 8 C.F.R. § 214.2(r)(1)(ii). Specifically, page 5 of the petition indicated that the Beneficiary's proposed position was a full-time position, and the petitioning entity's secretary, [REDACTED] stated in a June 2020 letter that "he [the Beneficiary] will work full time and will work 6 to 8 hours daily." The record, however, lacked sufficient evidence to substantiate these claims.

Other evidence in the record also did not support these statements. According to a document entitled "Daily Schedule," from Monday through Saturday, the Beneficiary would spend between 2 and 2½ hours each day participating in either morning or evening prayer, and on Sunday, he would spend 3 hours participating in Sunday services. These activities would total 17 hours of work per week. The "Daily Schedule" also claimed that if the need arose, the Beneficiary would work an "additional twenty-three hours" a week. The Petitioner, however, did not demonstrate how frequently or how likely such need would arise. The Petitioner also offered letters alleging that the Beneficiary would take on additional religious duties but it failed to establish the number of hours he would spend on such duties. As such, the "Daily Schedule" and other documentation then before us did not sufficiently

substantiate the Petitioner's claim that the Beneficiary would work full time as claimed in the petition or work on average at least 20 hours per week as required under 8 C.F.R. § 214.2(r)(1)(ii).

In addition, we discussed in our previous decision inconsistencies in the record concerning the Beneficiary's proposed work schedule. [redacted]'s June 2020 letter stated that the Beneficiary would perform worship services from Monday through Saturday, twice a day, between 5:00 am and 6:00 am, and between 6:00 pm and 8:00 pm. [redacted] also claimed that the Beneficiary would participate in two services on Sunday, "one in the morning and one in the afternoon." These statements, however, contradicted the "Daily Schedule," which stated that the Beneficiary would participate in one service, not two services, each day. Also, the duration of the services as noted in [redacted]'s letter was inconsistent with the information stated in the "Daily Schedule." The Petitioner did not resolve these inconsistencies concerning the Beneficiary's intended work schedule as a religious worker. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (stating "it is incumbent upon the [P]etitioner to resolve the inconsistencies by independent objective evidence" and that "[a]ttempts to explain or reconcile the conflicting accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice").

Furthermore, we noted in our previous decision that the Petitioner failed to submit sufficient evidence to confirm the need for the Beneficiary's services. Specifically, according to [redacted]'s June 2020 letter, the petitioning entity "needs five priests at any giving time," including the Beneficiary. The record, however, lacked sufficient documentation verifying that the Beneficiary would likely work full time, as claimed in the petition, when there would be four other religious workers serving the same congregation, performing the same or similar duties. Based on these reasons, we determined in our previous decision that the Petitioner did not sufficiently demonstrate that the Beneficiary would likely work as a religious worker full-time, as alleged in the petition, or work on average at least 20 hours per week, as required under the regulation. *See* 8 C.F.R. § 214.2(r)(1).

On motion, the Petitioner asserts that [redacted]'s letter was not a schedule," and argues that we should not have compared its contents with information stated in "Daily Schedule." A reading of [redacted]'s letter, however, does not support the Petitioner's characterization. As noted, [redacted]'s letter specified that "he [the Beneficiary] will work full time . . . including performing worship services held on Mondays–Saturdays from 5:00 am to 6:00 am and in the evenings from 6:00 pm to 8:00 pm." The letter also specified the Beneficiary's work schedule on Sundays. The letter therefore discussed the Beneficiary's proposed schedule and it was inconsistent with information contained in the "Daily Schedule." The inconsistencies concerning the Beneficiary's proposed work schedule remain, and on motion, the Petitioner has not resolved or reconcile them by independent, competent, and objective evidence. *See Matter of Ho*, 19 I&N Dec. at 591-92.

Moreover, on motion, the Petitioner has failed to address other issues we raised in our appellate decision, including the lack of sufficient documentation substantiating its claim that the Beneficiary would work full time, as specified in the petition, and the need for his services in light of the Petitioner's claim that it would have four additional religious workers serving the same congregation, performing the same or similar duties. Accordingly, the Petitioner has not shown on motion that our determination concerning the Beneficiary's proposed work schedule "was based on an incorrect application of law or policy" or that our "decision was incorrect based on the evidence in the record of proceedings at the time of the decision." *See* 8 C.F.R. § 103.5(a)(3); *see also* 8 C.F.R.

§ 214.2(r)(1)(ii). Based on these reasons, we will dismiss the Petitioner's motion to reconsider the matter.

B. Motion to Reopen

We will also dismiss the Petitioner's motion to reopen the proceeding. In support of the instant motion filing, the Petitioner offers a September 2021 letter from its president, [REDACTED]. In his letter, he claims that on Saturdays, the Beneficiary will work a total of 15½ hours, and that he will work a total of 30 hours per week.² This letter contradicts both the "Daily Schedule" and [REDACTED]'s June 2020 letter, because neither the "Daily Schedule" nor [REDACTED]'s letter states that the Beneficiary will work 15½ hours on Saturdays. As noted, when there are inconsistencies in the record, the Petitioner must resolve and reconcile them with independent, competent, and objective evidence. *See Matter of Ho*, 19 I&N Dec. at 591-92. The Petitioner has not done so here.

In addition, as discussed, page 5 of the petition specifies that the Beneficiary's position is a full-time position, and [REDACTED]'s June 2020 letter similarly claims that "he will work full time and will work 6 to 8 hours daily." The evidence the Petitioner submits on motion, specifically, [REDACTED]'s letter, does not sufficiently corroborate the claim that the Beneficiary will, more likely than not, work full time as a religious worker. *See* 8 C.F.R. § 214.2(r)(1)(ii).

Furthermore, [REDACTED] alleges in his September 2021 letter that "Sikh worships are performed in Jatha (at least 3 people perform all the rights of the prayers)." This does not sufficiently demonstrate the Petitioner's need for the Beneficiary's services in light of the Petitioner's earlier claim that in addition to the Beneficiary, it will have four additional religious workers serving the same congregation, performing the same or similar duties. Accordingly, the Petitioner has not "state[d] new facts and be supported by documentary evidence," as required under 8 C.F.R. § 103.5(a)(2). Based on these reasons, we will dismiss the Petitioner's motion to reopen the proceeding.

III. CONCLUSION

We will dismiss the Petitioner's motion to reconsider the matter because its filing does not establish that we erred in our previous appellate decision. Similarly, we will dismiss the Petitioner's motion to reopen the proceeding because the additional evidence does not address all the concerns we raised in our appellate decision or demonstrate the Petitioner's eligibility to classify the Beneficiary as an R-1 nonimmigrant religious worker.

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.

[REDACTED]'s September 2021 letter provides: "Saturday: 2:30 hours plus throughout day work equal to (5 am to 6 pm) 13 hours" and "[t]otal of 30 hours" per week.