U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21512458

Date: MAR. 01, 2022

Appeal of California Service Center Decision

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

The Petitioner, a religious organization, seeks to classify the Beneficiary as a nonimmigrant religious worker to perform services as a Pastor and Teaching Elder. *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 religious occupations in the United States.

This matter was last before the AAO on August 8, 2018, at which time we dismissed the Petitioner's appeal of the Director of the California Service Center's decision. The Director had concluded in its denial decision that based upon the evidence regarding the Petitioner's past compensation of the Beneficiary, and the identity of the entity that compensated the Beneficiary (third-party compensation), it had not established how it intended to compensate him as required under 8 C.F.R. § 214.2(r)(11). On appeal, we agreed with the Director regarding the Beneficiary's past compensation and dismissed the appeal for that reason, but declined to reach the matter of third-party compensation.[1] This matter is again before us on remand from the U.S. District Court for the District of Columbia for further proceedings consistent with its opinion. *See Nat'l Cap. Presbytery v. Mayorkas*, No. CV 18-2681 (TJK), 2021 WL 4860621, at *10 (D.D.C. Oct. 19, 2021).

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. Upon *de novo* review, we will sustain the appeal.

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 religious occupations. The petitioning organization must establish, among other requirements, 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 C.F.R. § 214.2(r).

[1] We also accepted the correction to the Petitioner's FEIN and gross and net annual income on appeal.

The regulation at 8 C.F.R. § 214.2(r)(11) discusses the requirements for compensation. It provides, in pertinent part:

> *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:
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> (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 [U.S. Citizenship and Immigration Services]. IRS 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. U.S.C.

II. ANALYSIS

As noted above, on appeal we agreed with the Director's conclusion that, based upon the evidence of past compensation, the Petitioner had not established how it intends to compensate the Beneficiary. In its opinion and order, the court found that our decision violated the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. § 2000bb. *Nat'l Cap. Presbytery*, 2021 WL 4860621, at *5-9. The court also emphasized that the Petitioner had submitted the required evidence of how it intended to compensate the Beneficiary, referring to supplementary evidence on this issue introduced into the administrative record after our decision. *Id.* at *7, n.9. Therefore, we withdraw the portion of our previous decision that focused on how the Petitioner previously compensated the Beneficiary in analyzing whether the Petitioner met the requirements of 8 C.F.R. § 214.2(r)(11).

With regard to the issue of third-party compensation of the Beneficiary, the court found that we may still determine that denial of the petition is appropriate on this or a new ground not previously addressed. *Nat'l Cap. Presbytery*, 2021 WL 4860621, at *9. In general, the regulation at 8 C.F.R. § 214.2(r)(11) requires a *petitioner* to submit evidence of how it intends to compensate a beneficiary, and makes no provision for the payment of compensation by other parties.[2] Here, as noted in the Director's decision, much of the evidence regarding the Beneficiary's previous compensation shows that it was paid not by the Petitioner, but by [redacted], where the Beneficiary was placed by the Petitioner as a minister and would continue to work. This includes the Beneficiary's 2015 and 2016 Forms W-2 and a residential lease agreement dated May 16, 2015 showing [redacted] as the tenant and the Beneficiary and his spouse as the occupants.

[2] The regulation allows a beneficiary to support themselves if the position is part of an established program for temporary, uncompensated missionary work. 8 C.F.R. § 214.2(r)(11)(ii). The Petitioner does not claim that the Beneficiary's position is part of such a program.

However, the record also includes evidence that [redacted] is part of a group of churches in the Petitioner's organization (presbytery). The constitution of the Presbyterian Church (U.S.A.) (PCUSA), known as the *Book Of Order*, describes a hierarchical structure of councils beginning with the session at the congregational level, then the presbytery, the synod, and the General Assembly.[3] The higher councils "have the right of review and control over a lower one."[4] This structure is further evidenced by the Internal Revenue Service (IRS) determination letter, dated January 31, 1964, which states that the United Presbyterian Church in the United States of America, which is referred to in later IRS documents as PCUSA, was granted group tax exempt status for itself and its "synods, presbyteries and churches" listed in the minutes of its general assembly. The Petitioner also submitted copies of its online directory showing that [redacted] is listed among its member churches.

In addition to confirming [redacted]'s membership in this hierarchy, the record also includes and references several sections of PCUSA's *Book of Order* which describe the relationship between the organization and its member presbyteries and sessions, including the presbytery's role in assigning, transferring, and removing ministers, and setting the terms for their compensation. Section G-3.03 states that "[T]he presbytery is responsible for the government of the church throughout its district," as well as assisting and supporting those congregations. Its responsibilities and powers include organizing, merging and dissolving congregations, establishing and dissolving pastoral relationships, and providing guidance and resources in areas including mission, leadership development and responsible administration. Also, in addition to the sections of the *Book of Order* noted in the court's opinion, which show a presbytery's authority to establish new congregations and assign ministers to congregations, subsection G-3.0303 states that the presbytery has the authority to "establish minimum compensation standards for pastoral calls . . . ." Subsection G-2.0804 states that sessions must follow these standards, which include participation in a benefits plan with a pension and medical coverage. Finally, subsection G-3.0303 also grants presbyteries the authority in matters of real property, including the selling or leasing of church property.

The totality of this evidence demonstrates a hierarchical relationship between the Petitioner and its member congregations in which the Petitioner has substantial authority to control the assignment and compensation of ministers at those congregations, as well as authority in other matters of governance and finances. Accordingly, after review and in accordance with the court's decision, we conclude that the Petitioner has satisfied the requirements of 8 C.F.R. § 214.2(r)(11). As there are no additional grounds of ineligibility, the appeal is sustained.

ORDER: The appeal is sustained.

[3] *Book of Order* 2019/2023, subsection F-3.0203
[4] *Id.*, subsection F-3.0206