



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

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

In Re: 34042081

Date: SEP. 13, 2024

Appeal of California Service Center Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Religious Worker)

The Petitioner, a Buddhist temple, seeks to classify the Beneficiary as a special immigrant religious worker to perform services as a monk (minister). *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 other 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, concluding the Petitioner did not establish that the Beneficiary possessed the requisite two-year qualifying religious work experience. *See* 8 C.F.R. § 204.5(m)(2), (4). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Non-profit religious organizations may petition for foreign nationals to immigrate to the United States to perform full-time, compensated religious work as ministers, in religious vocations, or in other religious occupations. The petitioning organizations 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) of the Act).

The regulation at 8 C.F.R. § 204.5(m) provides, in pertinent part, that in order to be eligible for classification as a special immigrant religious worker, a foreign national must:

(2) Be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position in one of the following occupations as they are defined in paragraph (m)(5) of this section:

- (i) Solely in the vocation of a minister of that religious denomination;
- (ii) A religious vocation either in a professional or nonprofessional capacity; or
- (iii) A religious occupation either in a professional or nonprofessional capacity.

....

(4) Have been working in one of the positions described in paragraph (m)(2) of this section, either abroad or in lawful immigration status in the United States,¹ and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. The prior religious work need not correspond precisely to the type of work to be performed.

The regulation at 8 C.F.R. § 204.5(m)(11) addresses the evidentiary requirements to establish prior religious work experience. It provides:

(11) *Evidence relating to the alien's prior employment.* Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work, must have occurred after the age of 14 If the alien was employed in the United States during the two years immediately preceding the filing of the application and:

- (i) Received salaried compensation, the petitioner must submit IRS documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of income tax returns.
- (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.
- (iii) Received no salary but provided for his or her own support, and provided support for any dependents, the petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS.

¹ U.S. Citizenship and Immigration Services (USCIS) no longer requires that the qualifying religious work experience for the two-year period, described in 8 C.F.R. § 204.5(m)(4) and (11), be in lawful immigration status. See 6 *USCIS Policy Manual* H.2(C)(2), <https://www.uscis.gov/policymanual>.

II. ANALYSIS

The Director denied the petition concluding that the Petitioner did not demonstrate the Beneficiary possessed the requisite full time, compensated work experience during the two years immediately preceding the filing of this petition, which spans from December 2021 to December 2023. *See* 8 C.F.R. § 204.5(m)(2), (4). Specifically, the Director determined that: 1) the Petitioner did not provide proof that the Beneficiary's prior employment was full-time; 2) the Petitioner did not provide letters from the Beneficiary's prior employers; and 3) the evidence regarding the Beneficiary's compensation, specifically his tax return transcripts showing earnings from 2021 to 2023, is inconsistent with the Petitioner's statement that the Beneficiary has not received any salary.

On appeal, the Petitioner claims through its counsel that "Buddhist monks are not expected to punch a time clock, but it is clear from the extent of his duties that it is indeed a full-time job" and that "although Buddhist monks are not paid a wage or salary, they can accept voluntary donations from the faithful, and those were the earnings reported on the [Beneficiary's] tax returns, not earnings from secular employment." However, counsel's unsubstantiated assertions do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) (stating that "statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). Instead, the Petitioner must demonstrate that the Beneficiary has continuously worked full-time and received salaried or non-salaried compensation during the qualifying period with verifiable and corroborating evidence. 8 C.F.R. § 204.5(m)(11); *see also Matter of Chawathe*, 25 I&N Dec. at 376 (noting that the petitioner must support their assertions with relevant, probative, and credible evidence). Here, the Petitioner has maintained that the Beneficiary worked for four different employers during the qualifying two years and submitted attestations and experience letters from each employer.

Under the preponderance of evidence standard, we acknowledge that the experience letters from the Beneficiary's two prior employers demonstrate his full-time, compensated employment from December 2021 to October 2022 and December 2022 to January 2023. The first letter is from [REDACTED] in California, indicating that the Beneficiary worked full-time (40 hours per week) from March 9, 2018, to October 6, 2022, and received non-salaried compensation or "donation income." The second letter is from [REDACTED] in North Carolina, indicating that the Beneficiary worked full-time (8 hours a day 5 days a week) from December 10, 2022, to January 22, 2023, "without salary or wages" but "accepted donation which offered to him for use of necessary things such as religious robes, meals, medicine and transportation." These letters support the Petitioner's claim that the earnings shown in the Beneficiary's tax return transcripts are donations.² Therefore, we partially withdraw the Director's determinations that there was no proof of the Beneficiary's full-time employment or that the Petitioner did not provide letters from prior employers.

However, the Petitioner has not established that the Beneficiary worked full-time while he purportedly worked at the [REDACTED] in Texas. For the first time on appeal, the Petitioner provides a letter from JMC dated June 10, 2024, in which

² The regulation at 8 C.F.R. § 204.5(m)(7)(xii) requires the prospective employer to attest that funds to pay a noncitizen's compensation does not include any monies obtained from the noncitizen but allows reasonable donations or tithing to the religious organization.

the chief abbot explains that the Beneficiary “used to reside at my meditation center and preached sermons and guided meditation techniques to the lay devotees . . . from October 6 till December 9, 2022.” However, the letter does not provide information regarding the Beneficiary’s work hours or compensation other than that “he volunteered his services for the Burmese community during his stay in my temple” and does not verify whether the Beneficiary was in fact employed. Therefore, we conclude that the Petitioner has not established the Beneficiary’s full-time employment from October 6, 2022, to December 9, 2022, and this two-month period breaks the continuity of the required two years of religious work experience. 8 C.F.R. § 204.5(m)(4).

Furthermore, we note several inconsistencies in the evidence regarding the Beneficiary’s non-salaried compensation, specifically his housing and work location, during his employment with the petitioning organization beginning January 2023. With the appeal, the Petitioner offers an updated letter from [redacted] as a medical doctor and a devout Buddhist, who previously attested to providing housing to the Beneficiary at [redacted] South Carolina. In the updated letter, Dr. [redacted] explains that he provided housing to the Beneficiary because “I have always dreamed of bringing a Buddhist monk to our area to provide spiritual services” and describes the Beneficiary’s religious activities performed in South Carolina and its surrounding communities. Yet Dr. [redacted] does not claim to be the Beneficiary’s employer or the Petitioner’s representative, or even a member of the petitioning organization in any of his letters.

The details provided in Dr. [redacted] letter are inconsistent with the information provided by the Petitioner. With the initial filing, the Petitioner stated that the Beneficiary’s work location will be at [redacted] Kentucky, and it will take “full responsibility for the [Beneficiary’s] needs such as accommodation.” The Petitioner also submitted a letter titled “Submitting Financial Documents and Description of Benefits” from its signatory stating that the petitioning organization “has already paid off mortgage for place of worship (house) situated [redacted] [redacted] and “will provide a room in the house for [the Beneficiary] to live free of charge.” Such statements conflict with the information given by Dr. [redacted] who claimed that the Beneficiary “began residing at [redacted] South Carolina] in January 2023” and “has performed numerous religious duties.” The case *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988), notes that “it is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence.” Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.* Here, the Petitioner has not explained this discrepancy or offered independent, objective evidence to resolve it.³

Based on the foregoing, we conclude the Petitioner did not demonstrate that the Beneficiary has the required two years of experience in a full time, compensated position during the period immediately preceding the filing of this petition. 8 C.F.R. 204.5(m)(2), (4).

³ In addition, the Petitioner stated in a letter dated December 4, 2023, that the Beneficiary “has been performing religious activities in California, Hawaii, Texas, North Carolina, and South Carolina in the U.S.A. since March 2018” but the record does not show that the Beneficiary ever worked or resided in any Buddhist monastery in Hawaii and the Petitioner does not address whether such employment or religious activities fall within the two-year period. The Petitioner also does not mention Kentucky as one of the locations where the Beneficiary has performed his religious activities although it originally claimed Kentucky as the Beneficiary’s work location in its initial filing.

III. CONCLUSION

The Petitioner has not established, by a preponderance of the evidence, its eligibility to classify the Beneficiary as an immigrant religious worker. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Here, that burden has not been met.

ORDER: The appeal is dismissed.