



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: JUL 17 2015

FILE #: [Redacted]
PETITION RECEIPT #: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:
[Redacted]

INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition and we dismissed a subsequent appeal. The matter is now before us on a motion to reopen and reconsider. The motion to reconsider will be denied, the motion to reopen will be granted, and the petition will be approved.

The petitioner is a Buddhist temple that seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as an assistant abbot monk. The director denied the petition, concluding that the petitioner did not establish that the beneficiary had the requisite two years of qualifying religious work experience while in lawful immigration status. We dismissed the petitioner's appeal and affirmed the director's determination that there was insufficient evidence to establish the two-year work experience requirement. The petitioner now submits a brief and additional evidence in support of its motion.

RELEVANT LAW AND REGULATIONS

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

Section 203(b)(4) of the Act, 8 U.S.C. § 1153(b)(4), provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before September 30, 2015, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before September 30, 2015, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of [the

Internal Revenue Code]) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m) states that in order to be eligible for classification as a special immigrant religious worker, the beneficiary must:

(1) For at least the two years immediately preceding the filing of the petition have been a member of a religious denomination that has a bona fide non-profit religious organization in the United States.

(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.

(3) Be coming to work for a bona fide non-profit religious organization in the United States, or a bona fide organization which is affiliated with the religious denomination in the United States.

(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, and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. . . .

The regulation at 8 C.F.R. § 204.5(m)(11) provides:

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, and if acquired in the United States, must have been authorized under United States immigration law. . . .

However, on April 7, 2015, the Court of Appeals for the Third Circuit held that the lawful immigration status requirement in 8 C.F.R. 204.5(m)(4) and (11) is *ultra vires* and impermissibly conflicts with section 245(k) of the Act with respect to adjustment of status. *See Shalom Pentecostal Church v. U.S. Dep't of Homeland Sec.*, 783 F.3d 156, 165-67 (3^d Cir. 2015). In accordance with this decision, USCIS will no longer deny special immigrant religious worker petitions based on the lawful status

requirements at 8 C.F.R. 204.5(m)(4) and (11) in the Third Circuit. As a result of this decision and other district court cases,¹ USCIS implemented a policy to apply the *Shalom Pentecostal Church* decision nationally, pending the issuance of amended regulations that will remove the lawful status requirements in 8 C.F.R. 204.5(m)(4) and (11). See USCIS Policy Memorandum PM-602-0119, *Qualifying U.S. Work Experience for Special Immigrant Religious Workers* (July 5, 2015), http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2015/2015-0705_Lawful_Status_PM_Effective.pdf [hereinafter July 15 Policy Memorandum]. Accordingly, USCIS no longer requires that the qualifying religious work experience for the two-year period preceding the submission of a Petition for Special Immigrant (Form I-360) be in lawful immigration status.

PERTINENT FACTS AND PROCEDURAL HISTORY

On April 27, 2011, the petitioner filed a Form I-360 seeking to classify the beneficiary as a special immigrant religious worker. The director issued a Request for Evidence (RFE), requesting, among other things, additional documentation pertaining to the beneficiary's immigration status. In response to the RFE, the petitioner submitted additional evidence and a brief requesting that the director suspend further action on the Form I-360 as the petitioner had appealed the denial of an R-1 extension filed on behalf of the beneficiary.

The director found that the beneficiary's nonimmigrant status expired on March 27, 2011, and therefore, the beneficiary did not have the requisite two years of continuous religious work experience in lawful immigration status. The director denied the petition accordingly.

We affirmed the director's determination that the petitioner did not establish the beneficiary met the requisite prior work experience. To the extent the director found that the beneficiary's nonimmigrant status expired on March 27, 2011, we disagreed with that finding. Rather, we concluded that the beneficiary's lawful status expired in October of 2010 when he changed employers without authorization and dismissed the appeal.

ANALYSIS

We conduct appellate review on a *de novo* basis. See *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3^d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n.9 (2^d Cir. 1989). As explained below, we deny the motion to reconsider, but grant the motion to reopen. Upon a full review of the record, we find that the petitioner has established its eligibility for the benefit sought. We withdraw our prior decision dated August 10, 2012, and approve the petition.

Lawful Immigration Status

In this case, the record shows the beneficiary was employed as a monk for at least the two-year period immediately preceding the date the petitioner filed the Form I-360. The record includes, but is not limited to, a volunteer agreement, numerous letters from co-workers and other temple members,

¹ See *Congregation of the Passion v. Johnson*, 2015 WL 518284 (N.D. Ill. Feb. 6, 2015); *Shia Ass'n of Bay Area v. United States*, 849 F.Supp.2d 916 (N.D. Cal. 2012).

property deeds, copies of bills, and photographs, all showing that the beneficiary worked and lived as a monk at the Buddhist temple in [REDACTED] Texas, and in [REDACTED] Texas, from at least April 27, 2009, until the date the Form I-360 was filed on April 27, 2011.

Although the issue of whether the beneficiary worked in unlawful status may be reviewed at a later date if the beneficiary files for adjustment of status, it is no longer a bar to eligibility for the instant petition. *See* July 15 Policy Memorandum; *see also Shalom Pentecostal Church*, 783 F.3d at 160 (describing the two-step process of first obtaining a visa, and then applying for permanent adjustment of status); *Matter of O*, 8 I&N Dec. 295 (BIA 1959) (the visa petition procedure is not the forum for determining substantive questions of admissibility under the immigration laws). Therefore, notwithstanding the regulation at 8 C.F.R. 204.5(m)(4) and (11) as currently written, in accordance with the Policy Memorandum, we find that the petitioner has established that the beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition. The petitioner has established eligibility to classify the beneficiary as a special immigrant religious worker pursuant to section 101(a)(27)(C) of the Act. The director's decision to the contrary is withdrawn.

CONCLUSION

The petitioner has established by a preponderance of the evidence that the beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has been met.

ORDER: The motion to reconsider is denied; the motion to reopen is granted. We withdraw our decision of August 10, 2012. The petition is approved.