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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



1 APR 21 2003

File: [Redacted]
LIN 01 154 53169

Office: NEBRASKA SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiary:



Petition: 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:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a diocese. It seeks classification of 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 a "priest/Parochial Vicar." The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

On appeal, counsel submits a brief.

Section 203(b)(4) of the Act 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 October 1, 2003, 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 October 1, 2003, 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 Code of 1986) 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).

8 C.F.R. 204.5(m)(1) states, in pertinent part:

Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or 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 of 1986 at the request of the organization. All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

The first issue to be discussed in this proceeding is whether the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

The petition was filed on April 16, 2001. Therefore, the petitioner must establish that the beneficiary was working continuously as a "priest/Parochial Vicar" from April 16, 1999 until April 16, 2001. The petitioner indicated on Form I-360, Petition for Amerasian, Widow, or Special Immigrant, that the beneficiary last entered the United States on June 25, 1999, as a student, and that his current status was to expire on June 1, 2002. Part 4 of the Form I-360 submitted by the petitioner indicates that the beneficiary has never worked in the United States without permission.

In a statement from the Sacred Heart Major Seminary, Detroit, Michigan, the Most Reverend [REDACTED] stated that the beneficiary was to be ordained on June 9, 2001, and that:

[F]rom the Fall semester of 1998 till [sic] his graduation with the Master of Divinity degree in the Spring of 2001, through the entire course of these years, he was a full time student here engaged in the program of seminarian studies leading to ordination.

In a letter dated March 28, 2001, the petitioner stated that the

beneficiary had been carrying on his seminary studies since 1996, having begun his studies at St. John's Seminary in Collegeville, Minnesota. The petitioner also stated that the beneficiary served as a chaplain at Altru Hospital in Grand Forks, North Dakota, from June 2, 1997 through August 8, 1997. The petitioner stated that the beneficiary transferred to the Lansing, Michigan, diocese in the "Fall of 1998." The petitioner also stated that the beneficiary served in the "evangelization" ministry in the spring of 1998, and as a chaplain at the St. Agnes Catholic Church Day Camp in Flint, Michigan, during the summer of 1998. The petitioner stated that the beneficiary's most recent position was in a ministerial internship at St. Patrick's Church in Brighton, Michigan. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Included in the record is a "decree" stating that on November 11, 2000, the beneficiary received "The Order of Transitional Diaconate."

Counsel stated that the beneficiary's course of study was in effect from December 1999 through August 2000, when the beneficiary began his full-time internship in Brighton, as part of his degree and academic program requirements. Counsel also stated that this resulted in the beneficiary's receipt of a Master of Divinity degree, upon his graduation on April 7, 2001. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner stated that the beneficiary would be: performing religious services that relate to the traditional religious functions of the Roman Catholic Church, conducting liturgical services, providing spiritual guidance to church members, preaching, and otherwise serving the parish.

On appeal, counsel states that the Bureau erroneously interprets the statute. Counsel also states that the beneficiary came to the United States as a religious student, changed his sponsorship to the petitioner's in 1998, and became a deacon on November 18, 2000. Counsel asserts that the beneficiary graduated from the seminary on April 7, 2001, and that he was ordained to the priesthood on June 9, 2001. Counsel argues that the Bureau has misinterpreted the definitions of "vocation" and "work, and that "[n]either the regulations nor the Church define vocation as work, although work may serve as a testimony to a religious vocation already embarked upon." Counsel states that the ordination is only one step "along the lifelong journey that constitutes a vocation." Counsel also quotes from a papal letter that states that candidates for the priesthood should approach holy orders fully aware of their vocations.

Counsel states that while the Bureau identifies the date of the beneficiary's ordination into priesthood as the day he began his "vocation," that the definition of vocation is in contradiction with this interpretation. Counsel states that the beneficiary began his vocation when he made the decision to enter "formation" and enrolled in the seminary, and that he further demonstrated that commitment by engaging in ministerial acts while attending the seminary.

Counsel argues that seminary studies should be recognized as evidence of carrying on the vocation of a religious worker, and that the Bureau had erroneously equated seminary studies with other graduate studies that a non-immigrant student might choose to pursue. Counsel states that a candidate within seminary studies is evaluated on much more than simply grades within a course of study, and that the "goals of attainment" also include "human/personal, spiritual, intellectual/theological, pastoral, and priestly" endeavors. Counsel also states that during his years in the seminary, the beneficiary served as a hospital chaplain, a day camp chaplain, a minister of the Eucharist, a lector and an acolyte. Counsel adds that the beneficiary also performed services relating to the traditional religious functions of the Church while serving as an intern in a parish.

Also included in the record is an undated copy of a portion of the admissions process requirements for a "Master of Divinity" degree at an unidentified school. One statement indicates that the seminary admission requirements are those of the Vocation Department of the Archdiocese of Detroit; however, further identification of the document is not possible.

No additional documentation of the beneficiary's attendance, transcripts, or evidence of his matriculation from the seminary, is provided in the record. An ordained priest engaged in advanced religious studies, who continues to function as a minister during the period of study, would meet the experience requirement. See *Matter of Z-*, 5 I&N Dec. 700 (Comm. 1954). A student of theology cannot be considered as having been continuously working in a religious vocation or occupation, notwithstanding the fact that the petitioner actively participated in mandatory ministry requirements prior to his graduation.

Counsel asserts that the beneficiary became a "lector" [reader of the bible during the liturgy] on February 10, 1997, and an "acolyte" [assistant to the presiding priest in the sanctuary or an altar server] on October 16, 1997. Counsel states that the positions of acolyte and lector formerly were both considered minor positions in the church, but that [REDACTED] in a document published in 1990, stated that these positions are blessed and commissioned for their respective ministries through special rites of "institution." No further reference is included in the record as to the authority or identification of Mr.

[REDACTED] to be cited as an expert on behalf of the Roman Catholic Church. Counsel also contends that the beneficiary's additional duties as acolyte and lector would not have been authorized without a "special rite of institution."

Counsel states that the director incorrectly cited a section of the regulations in his decision. It is noted that the director's cite of "8 C.F.R. 204.5(m)(3)(ii)(B)" should have read "8 C.F.R. § 204.5(m)(3)(ii)(A)" instead. This portion of the director's decision shall be corrected.

In a letter dated April 6, 2002, the petitioner states that the beneficiary's preparation for the priesthood while in the seminary was extensive and included his instillation as a lector and an acolyte. The petitioner states that the beneficiary began his duties as lector in 1998, and that he also ministered to the ill and practiced door-to-door evangelical ministry, as well as performed other duties.

Included in the record is a certificate stating that the beneficiary was "instituted" to the ministry as a lector on February 10, 1997 at the Mary, Mother of the Redeemer Chapel, St. John's Seminary, in Collegetown, Minnesota. Also included in the record is a certificate dated October 16, 1997, from the same institution stating that the beneficiary was instituted to the ministry of acolyte on that date.

Although the record does list the duties of the petitioner, it does not provide a comprehensive description of the petitioner's activities during the two-year period immediately preceding the filing date of the petition. The performance of duties as a lector and/or acolyte during a portion of the beneficiary's time while he engaged in seminarian studies, does not establish that the beneficiary continuously performed the duties of a qualifying religious vocation or occupation. The unsupported assertions contained in the record do not adequately establish that the petitioner was continuously performing the duties of a qualifying religious vocation or occupation throughout the two-year period immediately preceding the filing date of the petition. Therefore, the petition must be denied.

Another issue that must be discussed is whether the petitioner had established that the beneficiary was qualified as a religious worker. Under 8 C.F.R. §§ 204.5(m)(2) and (3), to establish that the job offered is a religious occupation, a petitioner for a special immigrant religious worker must show the religious nature of the work, the religious training required to do the job, and how the alien has met the training requirements. To establish that the job offered is a religious vocation, a petitioner must show that the job requires the taking of vows or a permanent commitment to a religious life, and that the alien has taken the requisite vows or made the requisite commitment.

A finding that the beneficiary was still a student on the filing date of the petition, and not yet ordained to perform the duties of the proffered position, precludes a finding that he was qualified to engage in the religious vocation or occupation at the time the petition was filed. For this additional reason, the petition may not be approved.

The final issue to be addressed in this proceeding is whether the petitioner has had the ability to pay the beneficiary a wage since the filing date of the petition. 8 C.F.R. § 204.5(m)(4) requires that each petition for a religious worker must be accompanied by a qualifying job offer from an authorized official of the religious organization at which the alien will be employed in the United States. The official must state the terms of payment for services or other remuneration. In addition, 8 C.F.R. § 204.5(g)(2) requires that the employing religious organization submit documentation to establish that it has had the ability to pay the alien the proffered wage since the filing date of the petition. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

The petitioner indicated that the beneficiary would not have to depend on any supplemental employment or solicitation of funds for his maintenance and support, and that his maintenance would be in accordance with the canonical norms as established by the diocese. The Bishop of the diocese states that the diocese employs "well in excess of 100 individuals" and gives full assurances that the diocese has sufficient resources to attend to the beneficiary's requisite needs. The petitioner provides no other evidence of its ability to support the beneficiary. The petitioner has not furnished annual reports, federal tax returns, or audited financial statements. The documents submitted do not satisfy the regulatory requirements of 8 C.F.R. § 204.5(g)(2). The petitioner has not demonstrated that it has extended a valid job offer to the beneficiary, or established its ability to pay the beneficiary the proffered wage. For these additional reasons, the petition may not be approved.

In reviewing an immigrant visa petition, the Bureau must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.