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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

BCIS, AAO, 20 Mass, 3/F

Washington, D.C. 20536



File:  Office: Nebraska Service Center

Date: **AUG 21 2003**

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:



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, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is seeking 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 nun. The petitioner indicates that it will provide the beneficiary with room, board, clothing and essentials in exchange for her services.

The director denied the petition on multiple grounds in a decision dated November 16, 2001. Specifically, the director determined that the petitioner had failed to establish that the beneficiary had been continuously carrying on the vocation for the two-year period immediately prior to filing the petition. The director also determined that the petitioner had failed to demonstrate the ability to financially provide for the beneficiary's needs so that she will not be dependent upon supplemental income for support.

On appeal, counsel for the petitioner asserts that the beneficiary has met the required two years of experience in the religious vocation and two years membership in the denomination. Counsel submits the petitioner's most recent audited financial statement for the nine-month period ending on September 30, 2001 in order to demonstrate the petitioner's ability to provide for the beneficiary's support.

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).

The petitioner is a Romanian orthodox monastery. The beneficiary is a native of Slovakia who entered the United States on June 24, 1983 in an unspecified manner.

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 addressed in this proceeding is whether the petitioner has established that the beneficiary has had the requisite two years of continuous experience in a religious vocation.

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

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.

The petition was filed on April 19, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on the vocation of nun since at least April 19, 1999.

On appeal, counsel submits an affidavit dated December 18, 2001 from the abbot of the monastery stating that:

. . . the beneficiary has been a Nun/Novice at our Monastery from January 10, 1999 until February 1, 2001. On February 1, 2001 she was tunctured.

. . . according to the cannons [sic] of [the] Orthodox Church activities for Novice Nuns are essentially identical to those of other regular Nuns and any Novice Nun engaged in the Novice training gains the same training and experience as the regular Nun. Moreover, [the beneficiary] has been authorized since January 10, 1999 to perform all the regular duties that nuns do.

In our Monastery Nuns engage in study, prayer and attend the needs of our Monastery, including cooking, cleaning

and maintenance of the premises, including gardening. They participate in liturgy and masses and work in the community to assist needy people. [The beneficiary] has been authorized to perform all the above mentioned duties and she did in fact performed [sic] them on the [sic] daily basis since January 10, 1999.

Nuns are not remunerated and receive no wages for their religious work. The Monastery provides [the beneficiary] with housing, food and clothing and thus she is not and will not be dependent on supplemental employment or solicitation of funds for support.

On appeal, counsel also submits a letter from the pastor of [redacted] Catholic Church in Cleveland, Ohio. The pastor states that "according to the canons [sic] of the church, activities for Novice Monks are essentially identical to those of other regular Monks and any Novice Monk engaged in Novice training gains the same training and experience as the regular Monk does."

The pertinent regulations were drafted in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they may not be salaried in the conventional sense and may not follow a conventional work schedule. The regulations distinguish religious vocations from lay religious occupations. 8 C.F.R. § 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. While such persons are not employed *per se* in the conventional sense of salaried employment, they are fully financially supported and maintained by their religious institution and are answerable to that institution.

Notwithstanding the statements provided on appeal that a novice receives the same training and experience as a nun, the beneficiary did not take her vows as a nun until February 1, 2001. The petitioner has, therefore, failed to establish that the beneficiary was carrying on the vocation of nun for the requisite two years prior to filing the petition. For this reason, the petition may not be approved.

The second issue to be addressed in this proceeding is whether the petitioner has the ability to financially provide for the beneficiary's needs so that she will not be dependent upon supplemental income for support.

With the initial submission of the petition, the petitioner provided copies of a balance sheet and a statement of revenue and expenses for the year ending December 31, 2000. The balance sheet of assets and liabilities reflected a negative fund balance totaling \$58,231. The statement of revenue and expenses reflected a

negative balance of \$35,711.

On appeal, counsel for the petitioner submits a copy of a statement of assets, liabilities, and equity for the month of September 2001, and a copy of a statement of revenues and expenses for the one month and nine months ending on September 30, 2001. The 2001 year-to-date information indicates that the petitioner has a positive balance of income over operating expenses totaling \$12,098.14.

In his decision, the director noted that the petitioner has filed numerous petitions on behalf of other beneficiaries. Although each petition must be adjudicated on its own merits, the Bureau must take into account the number of petitions filed as a total and the financial responsibility of the petitioner to provide for the needs of each beneficiary.

It is concluded that the petitioner has failed to credibly establish the ability to provide for the beneficiary's needs. The petitioner indicates that it will provide the beneficiary with room, board, clothing and essentials in exchange for her services. However, the financial evidence contained in the record reflects that the petitioner had negative account balances for the year ending December 30, 2000, and a modest income for the first nine months of 2001. Furthermore, there is no information or documentation contained in the record as to the total number of individuals the petitioner supports. There is insufficient evidence to establish that the petitioner has either adequate room or the financial means to provide the beneficiary, and all other individuals dependent upon the monastery, with board, clothing and other essentials. For this reason as well, the petition may not be approved.

While the determination of an individual's status or duties within a religious organization is not under the Bureau's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within the Bureau. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

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

ORDER: The appeal is dismissed.