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U.S. Department of Homeland Security

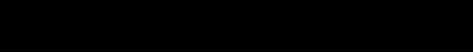
Citizenship and Immigration Services

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



File  Office: NEBRASKA SERVICE CENTER

Date: DEC 16 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: SELF-REPRESENTED

**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 Citizenship and Immigration Services (CIS) 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.

*Cindy M. Gomez for*  
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 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 nun.

The director determined that the petitioner failed to establish that the beneficiary had been continuously engaged in a qualifying religious vocation for at least two years immediately preceding the filing date of the petition.

On appeal, the petitioner asserts that the beneficiary became a "religious" at the time of taking her "first profession." In support of the appeal, the petitioner submits a letter from [REDACTED] General of the Congregation of Josephine Sisters [REDACTED] stating that the beneficiary made her first profession to the religious order on August 15, 1994.

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, 2008, 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, 2008, 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 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 record reflects that the petitioner is provincial of a religious congregation of seven Sisters, affiliated with the Catholic Church Diocese of . The congregation wishes to have the beneficiary, a native and citizen of Mexico, provide services as a nun at the Center, a daycare center owned and operated by the congregation.

The issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary had been continuously engaged in a qualifying religious vocation for the two years immediately preceding the filing date of the petition.

The regulations at 8 C.F.R. § 204.5(m)(1) state, 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 30, 2001. Therefore, the petitioner must establish that the beneficiary was continuously engaged as a nun since at least April 30, 1999.

In response to the director's request for additional documentation, the petitioner submitted evidence that the beneficiary took her final vows as a nun on August 13, 2000. On appeal, the petitioner asserts that the beneficiary became an active "religious" of the institute order on August 15, 1994, when she made her first profession to the order.

The regulations at 8 C.F.R. § 204.5(m)(3)(ii)(D) require a petitioner for a special immigrant religious worker to show that the alien is qualified in the religious vocation or occupation. According to 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States solely for the purpose of carrying on the religious work. To establish that a religious vocation is offered, a petitioner must show that the job requires the taking of vows and a permanent commitment to a religious order, and that the alien has taken the requisite vows and made the requisite commitment.

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 petitioner's assertion that the beneficiary made her first profession to become a member of the religious order in August 1994, the evidence submitted reflects that the beneficiary did not take her final vows as a nun until August 2000. The petitioner has, therefore, failed to establish that the beneficiary was continuously engaged in a qualifying religious vocation for the requisite two years prior to filing the petition. For this reason, the petition may not be approved. It is noted that final vows were taken in August 2000. The finding in the instant petition would not preclude the petitioner from filing a subsequent petition on behalf of the beneficiary.

The petitioner bears the burden to establish eligibility for the benefit sought. In reviewing an immigrant visa petition, the Bureau must consider the extent of documentation 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, that burden has not been met.

**ORDER:** The appeal is dismissed.