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Bureau of Citizenship and Immigration Services

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

JUL 08 2003

File: LIN 01 163 50405 Office: NEBRASKA SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiary:

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:

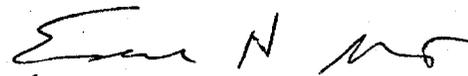
INSTRUCTIONS:

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 employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as a pastoral assistant. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a pastoral assistant immediately preceding the filing date of the petition.

On appeal, counsel asserts that a "typographical error" resulted in an incorrect tally of the beneficiary's months of employment.

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).

Regulations at 8 C.F.R. § 204.5(m) state, in pertinent part:

(1) An alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. . . . 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, or working in a religious vocation or occupation for 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. . . .

(2) Definitions. As used in this section:

* * *

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

(3) Initial evidence. Unless otherwise specified, each petition for a religious worker must be accompanied by:

* * *

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

* * *

(iv) In appropriate cases, the director may request appropriate additional evidence relating to the eligibility under section 203(b)(4) of the Act of the religious organization, the alien, or the affiliated organization.

The petition was filed on May 14, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a pastoral assistant from May 15, 1999 to May 14, 2001.

In a letter accompanying the initial submission, Father [REDACTED] of the petitioning church states that the beneficiary "has been employed for the past three years as a novice monk and pastoral assistant at St. Herman Orthodox Church" and at the petitioning church. Father [REDACTED] asserts that the beneficiary "currently carries out his duties as a Pastoral Assistant for our organization after training and serving as a novice monk at St. Herman for a period of approximately 14 months."

[REDACTED] of St. Herman of Alaska Brotherhood states that the beneficiary "was a member of our Monastery for a period of over 14 months on the following dates:

1. August 15 to October 30, 1997
2. March 11 to May 30, 1998
3. October 1999 to August 2000."

[REDACTED] states "[d]uring his time at the St. Herman Monastery, [the beneficiary] worked in the capacity of a reader, acolyte and novice monk, and he served to help with our missionary work." Neither Father [REDACTED] nor [REDACTED] claims that the beneficiary was employed as a pastoral assistant at St. Herman Monastery.

The director requested additional evidence, instructing the petitioner to "clarify the reason(s) that the offered position is not that of a monk," and to submit evidence that the beneficiary worked in the position continuously for the two years immediately preceding the filing of the petition. In response, the petitioner has submitted new letters. [REDACTED] of St. Herman Monastery states:

During his time at St. Herman of Alaska Monastery, [the beneficiary] served as a reader and acolyte in the Monastery, assisting in the services. . . . [The beneficiary] also participated in the prayer life of the Monastery, as well as the continuing education. . . . [The beneficiary] also helped to serve with our missionary work. . .

[The beneficiary] was provided with room and board during his periods of training at the Monastery.

[The beneficiary] did not complete his training as a monk and therefore did not complete his vows to become a monk. However, we believe that the training that [the beneficiary] received in our Monastery can serve him as appropriate preparation for work as a Pastoral Assistant because of the valuable experience he

gained in assisting in services, participating in religious functions and studying the scriptures and church history.

An unsigned document, headed "TRAINING AND EXPERIENCE," shows the following information:

August, 1998	→	October, 1999	[The petitioner]	3 months
October, 1999	→	August, 2000	St. Herman of Alaska Monastery	11 months
September, 2000	→	April, 2001	[The petitioner]	8 months ¹

(Earlier dates, entirely outside of the relevant two-year period, have been omitted.)

The director denied the petition, noting that the above listing shows only 22 months from August 1998 to April 2001. The director stated that 22 months is not sufficient, even if the petitioner had specified which three months the beneficiary worked between August 1998 and October 1999 (only some of which fell during the qualifying period).

On appeal, counsel blames "a typographical error" on the above document, and states that it should have read "15 months" rather than "3 months." The petitioner submits a revised timetable, signed by Father [REDACTED] reflecting this correction, as well as an additional, unsigned timetable. The new, unsigned timetable reports seven months worked at the petitioning church from April 1999 to October 1999, and 11 months worked at St. Herman Monastery from October 1999 to August 2000. These counts cannot, mathematically, be correct because the month of October 1999 is counted twice. Exactly 17 months elapsed between April 1, 1999 and August 31, 2000, but the figures in the timetable add up to 18 months during that period.

Counsel's explanation regarding a typographical error on the timetable is reasonable, but the director's decision did not rest entirely on the timetable. The director had also stated that the petitioner has the burden of showing that the beneficiary's activities during the two-year period were "equivalent to the offered position [and] that it was engaged in as an occupation."

[REDACTED] of St. Herman Monastery, in his letters, has deemed the beneficiary's time at the Monastery to have constituted "periods of training." We do not consider "training," during which time the beneficiary was supported only with room and board, to constitute qualifying employment experience.

¹ The petitioner states that the petitioner has continued to employ the beneficiary after April 2001; the timetable stops at April 2001 because the petitioner first attempted to file the petition on April 27, 2001. The filing did not include a properly signed check. The petitioner subsequently submitted an acceptable check on May 14, 2001. Counsel has requested that April 27, 2001 be retained as the filing date, but the Bureau cannot honor this request. Pursuant to 8 C.F.R. § 103.2(a)(7), a petition is not considered to have been properly filed until it is submitted with the appropriate fee. The specific filing date is without significant consequence in this proceeding, because there was no change in the beneficiary's employment between April 28 and May 15, 1999, or between April 27 and May 14, 2001, and therefore the basic facts of the proceeding remain the same whichever date we consider to be the filing date.

Furthermore, 8 C.F.R. § 204.5(m)(1) requires that the alien "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." Because the petitioner seeks to employ the beneficiary as a pastoral assistant, the petitioner must establish that the beneficiary worked as a pastoral assistant during the entire two-year period immediately preceding the filing of the petition. The letter from [REDACTED] does not indicate that the monastery employed the beneficiary as a pastoral assistant. Rather [REDACTED] that the beneficiary was "training as a monk" and performed duties which, coincidentally, "can serve him as appropriate preparation for work as a Pastoral Assistant." Even the petitioner has never stated that the beneficiary was a pastoral assistant at the monastery; rather, the petitioner has repeatedly stated that the beneficiary was a "novice monk" there.

Counsel asserts on appeal that the beneficiary "possesses nearly three years [of] continuous work experience in the religious occupation prior to the date of filing the I-360." The beneficiary, however, was training as a novice monk, rather than employed as a pastoral assistant, from October 1999 to August 2000. The clear regulatory distinction at 8 C.F.R. § 204.5(m)(2) between religious occupations and religious vocations appears to preclude a finding that a "novice monk" is identical to a "pastoral assistant." Thus, we cannot find that the beneficiary was employed in the capacity of pastoral assistant throughout the entire two-year period immediately preceding the May 14, 2001 filing of the petition. The petition cannot be approved.

Beyond the cited grounds for denial, another issue requires at least a brief mention. The petitioner has indicated that the beneficiary "will not be required to carry on any additional work outside the organization" because he "receives room and board (valued in Oregon at approximately \$400 per month) and travel expenses. In addition, [the beneficiary] receives a \$50-\$100 per month stipend for personal needs." The aggregate total of the beneficiary's room and board and stipend (assuming full-time employment with a stipend of \$100 per month) amounts to \$6,000 per year, which is equivalent to less than three dollars per hour, barely half the minimum wage. It is far from clear that this remuneration amounts to a living wage, commensurate with full-time employment.

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

ORDER: The appeal is dismissed.