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Citizenship and Immigration Services

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

[REDACTED]

File [REDACTED] Office: VERMONT SERVICE CENTER

Date: **NOV 19 2003**

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: 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.


Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a convent. 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 an associate lay collaborator. The director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary.

On appeal, the petitioner submits copies of documents, some previously submitted, and asserts that the beneficiary's services are needed at the petitioning facility.

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 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)(4) states that each petition for a religious worker must be accompanied by a job offer from an authorized official of the religious organization at which the alien will be employed in the United States.

The regulations at 8 C.F.R. § 204.5(m)(2) contain the following pertinent definitions:

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.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

CIS therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

Further, while the determination of an individual's status or duties within a religious organization is not under CIS's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with CIS. 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).

Sister [REDACTED] Superior of the petitioning convent, states:

[The beneficiary] has been a voluntary lay associate of [the petitioner] since 1987.

We . . . wish that [the beneficiary] continue staying at this convent as an associate Lay collaborator, serving and attending to the spiritual, moral and material welfare of the young women in our care. Her duties here are helping the Sisters in their work as required, including: reception, and welcoming duties, special help with house duties, and also directing the music and choir in the Chapel.

Unfortunately, vocations to the religious life are very limited in the United States and the need is tremendous. Our community is made up of only 7 sisters and we have to take care of about 80 young women who live in our Residence to whom we have to give personal attention. We rely on lay collaborators [like the beneficiary].

As an associate collaborator she is cared for by the Congregation receiving full maintenance, a small stipend for clothing and personal expenses, room and board. She has never and will never work outside the convent.

[REDACTED] parish priest of Our Lady of Lourdes Church and chaplain of the petitioning institution, states "I have known [the beneficiary] for a number of years as she directs the music and choir."

The director instructed the petitioner to submit evidence to establish the beneficiary's past experience, and to show that the beneficiary's duties "require specific religious training beyond that of a dedicated and caring member of the congregation or body. The evidence must establish that the job duties are traditional religious functions above those performed routinely by other members."

In response, Sister [REDACTED] repeats the assertion that the petitioner must increasingly rely on lay workers such as the beneficiary, because of a decline in the number of individuals committing to religious vocations. Of the beneficiary's duties and training, Sister [REDACTED] states:

[The beneficiary] has been dedicated to work with our Congregation as an Associate for the past thirteen years. She received a year's religious training in our house of formation: Brasilia, Colomos, Guadalajara, Mexico in 1989. . . . She works as all the Sisters, living in the Convent and is given full board. Associates do not wear habits but receive a small stipend each month to cover the cost of personal needs. . . .

[The beneficiary's] duties are multifarious. She is responsible for music and choir at all our religious services. She serves in the reception, receiving girls, attending to the telephone, accompanies Sisters on shopping and business trips, does her share of routine cleaning along with all members of the Community, she checks stores and often assists in the kitchen.

The record contains no documentation of the beneficiary's year of training as described. The petitioner has indicated that the beneficiary has, essentially, the same duties as the sisters of the petitioning entity, except that she has taken no vows and thus remains a lay worker.

The petitioner submits a copy of the religious order's *Pedagogical – Pastoral Plan*, which includes the following section:

3.7. Means and activities

3.7.1. Reception

This is shown by specific actions from the first moment that a young girl approaches us, until she is accepted, by listening, attending to her and following up.

3.7.2. Personal encounter

This is necessary to acquire an adequate knowledge of the girl, so as to discover in each moment signs of the presence of God within her.

It should be done by means of dialogue, of meaningful searching, of attention and respect. It should be periodic and properly prepared so as to communicate enriching matter for the growth of her person. It is most important that it should be on a continual basis.

Another passage, section 3.4.3., discusses "secular collaborators" whose "presence and testimony . . . offers the possibility of a more concrete proposal of models of Christian life for the young and also offers us as religious a greater opportunity to dedicate ourselves to our own specific field." This passage suggests that lay workers such as the beneficiary serve the purpose of attending to secular duties in order to allow the sisters more time for religious duties. Nothing in section 3.7 (quoted above, and highlighted by the petitioner in a re-submitted excerpt on appeal) refers specifically to secular collaborators.

The director denied the petition, stating that the petitioner has not documented the beneficiary's claimed training or shown that the beneficiary's duties qualify as a religious occupation. The director observed that, because the beneficiary has taken no vows or otherwise demonstrated comparable commitment, the beneficiary's position cannot qualify as a religious vocation, and therefore she remains subject to the requirements regarding religious occupations.

On appeal, the petitioner submits copies of federal tax exemption information, although the director did not raise the petitioner's tax exemption as a basis for denial. The petitioner's prior submissions contained ample evidence of this exemption.

The petitioner submits documentation of the beneficiary's one-year Bible study course in Mexico from 1989 to 1990. An untranslated certificate attests to the beneficiary's "*participación en el Curso*

Intensivo de Catequesis Superior" in Mexico in 1994. The petitioner had initially indicated that the beneficiary has been in the United States since 1987, but the record now documents at least two trips to Mexico, one of which is claimed to have lasted a year, the other being of indeterminate duration.

Father [REDACTED] offers another letter, stating that the beneficiary "participates in many activities in our Church as a volunteer." He does not corroborate the petitioner's claim that the beneficiary has worked full-time for the petitioner in New York for over "thirteen years" while also attending classes in Mexico in 1989-90 and 1994.

Sister [REDACTED] states of the beneficiary that "**we need her**, and for that reason we would beg you to reconsider your decision." We do not dispute the assertion that the petitioning facility is understaffed, or at least would be understaffed without the beneficiary's involvement, but the denial was not based on any finding to the contrary. Rather, the issue is whether the beneficiary is lawfully entitled to the immigration benefit sought. The petitioner cannot overcome the grounds for denial by arguing, however sincerely, that the beneficiary provides needed services.

Sister [REDACTED] claims that the beneficiary "had been a religious sister for six years. . . . [S]he recognized that this was not her vocation, but wished to continue being part of the Congregation and then she became an Associate Lay Collaborator." Having previously argued that the beneficiary's duties were essentially identical to those of a religious sister, it is not clear why the beneficiary would abandon plans to become such a sister but nevertheless continue performing the same duties and residing in what the petitioner has described as a "convent." Apart from the lack of evidence that the beneficiary was, temporarily, a sister who never completed her vows, this information underscores, rather than refutes, the director's observation that the beneficiary herself is not a committed member of a religious vocation and therefore she can qualify only if her work qualifies as a religious occupation.

The petitioner had earlier indicated that it would not be feasible to compile a weekly schedule of the beneficiary's activities. Nevertheless, the appeal includes just such a schedule, which indicates that the beneficiary's duties include six hours of "guitar rehearsal and organiz[ing] the music sheet," 15 hours of "morning chores in the Residence," 12 ½ hours of "reception," six hours of "going out to collect donations," and other duties including preparation of meals and attending (but apparently not conducting) mass. The petitioner has not explained how these functions require religious training or are otherwise inherently religious rather than secular in nature.

Upon consideration, it does not appear that the beneficiary's duties are predominantly religious in nature, rather than secular duties which happen to be in the context of a religious institution. While the beneficiary apparently took one year of Bible instruction in Mexico, the petitioner has not established any connection between those studies and the beneficiary's ability to perform such duties as guitar practice and reception. The petitioner has not overcome the director's finding that the beneficiary's work does not constitute a traditional religious function outside of a vocation, and thus a religious occupation.

Review of the record reveals an additional issue. The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

In a request for evidence issued before the denial of the petition, the director requested the petitioner's Form 990 return or other evidence of its ability to financially support the beneficiary. The petitioner's response did not address this request. The petitioner simply reiterated the initial claim that the beneficiary receives lodging, board and a monthly stipend of unspecified size.

The record contains no documentation at all to establish the petitioner's financial status and therefore the petitioner has failed to establish, as required, its ability to provide for the beneficiary. The tax exemption information submitted on appeal includes a letter from the Internal Revenue Service, indicating that the petitioner "must pay tax under the Federal Insurance Contributions Act . . . for each employee who is paid \$100 or more in a calendar year." Because this letter was submitted by the petitioner, it is reasonable to expect the petitioner to have knowledge of the letter's contents. If the beneficiary's monthly stipend exceeds \$8.33, then the above law would appear to apply to that stipend. The record contains no evidence that the petitioner has paid this tax for the beneficiary, as required under federal law. The fact that the beneficiary entered the United States illegally without inspection does not exempt her from federal tax laws, nor does it relieve the petitioner of its responsibility to report these payments.

In the absence of the required financial documentation, there is no evidence that the petitioner is able to support the beneficiary, or to show that the beneficiary has in fact received the claimed stipend payments. 8 C.F.R. § 204.5(m)(4) requires the petitioner to establish the terms of remuneration; the vague assertion that the beneficiary has received and will receive an unspecified stipend cannot suffice.

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.