

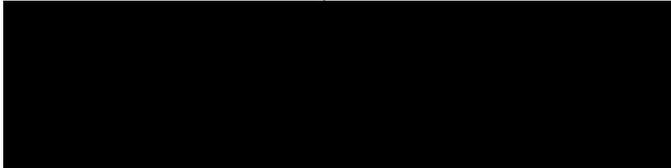
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U.S. Department of Homeland Security  
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U.S. Citizenship  
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Services

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DEC 30 2004

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date:  
EAC 02 115 51972

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 of the Administrative Appeals Office 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.

*Mari Johnson*

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 sustained and the petition will be approved.

The petitioner is a religious organization affiliated with the Catholic Church. 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 be employed as a "cloister nun." The director denied the petition, determining that the petitioner had failed to establish that the beneficiary's proposed position as a "missionary" constitutes a religious occupation or that the beneficiary has the requisite two years experience in the position prior to the filing of the petition. The director further found that the petitioner failed to establish its financial viability and thus its ability to pay the beneficiary.

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).

The regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that "[a]n 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. 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 regulation indicates that the "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."

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 official must describe the terms of payment for services or other remuneration.

The first issue to be examined is whether the petitioner has demonstrated that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for at least the two years preceding the filing of the petition. Connected with this issue is the question of whether the beneficiary's work for the petitioner constitutes qualifying employment in a religious occupation or vocation.

8 C.F.R. § 204.5(m)(2) states, in pertinent part:

*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.

8 C.F.R. § 204.5(m)(1) states, in pertinent part, that "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 February 14, 2002. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation from at least February 14, 2000. The Form I-94, Arrival and Departure Record, indicates that the beneficiary entered the United States as an R-1 nonimmigrant with authorization to remain in the United States until November 22, 2003.

8 C.F.R. § 204.5(m) defines a "religious vocation" as "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" (emphasis added).

The petitioner states that the beneficiary has been a member of the Dominican community since October of 1982 where she began working in the Dominican mission in Angola. The petitioner contends that the beneficiary continued to work in the mission and subsequently made her vows on April 22, 1990. The petitioner states that the beneficiary continued to carry out her "religious duties" in Spain and Angola until being assigned to Puerto Rico in 2000.

The record contains a copy of the beneficiary's signed vows, dated April 22, 1990, to "profess and promise obedience to God . . . in accordance with St. Augustine's Rule, and the Nun's Constitution of the Preicator's Order" until death.

Despite the evidence of the beneficiary's vows as a nun and her entry into the United States to join the Dominican order as a nun, the director's decision focused only whether the beneficiary's work qualified as a religious occupation.

We find the evidence contained in the record sufficiently establishes the beneficiary's formal commitment and permanent vows as a nun. Thus, for the requisite two-year period for this petition, February 2000 through

February 2002, the record indicates that the beneficiary served in a vowed capacity in a religious vocation for the petitioner.

Thus, we conclude that the petitioner has submitted sufficient evidence to demonstrate that the beneficiary is qualified to engage in a religious vocation and that she has, in fact, been working in the religious occupation for the requisite two years.

As determined by the director, the remaining issue is the petitioner's financial "viability." In the request for additional evidence, the director had noted the requirement to establish proof of past employment, the petitioner must provide "documentary evidence such as pay statements, W-2's [sic], or cancelled checks." The director also requested evidence that the alien will not be "solely dependent on supplemental employment or solicitation of funds for support." In his denial, the director determined the petitioner failed to submit evidence which would "highlight [the petitioner's] viability financially at the address listed on the petition."

We find our determination that the beneficiary has been and is engaged in a religious vocation renders the director's ground for denial related to the petitioner's finances to be moot. On appeal, the petitioner argues that it has covered all of the beneficiary's expenses and will continue to do so. It is inherent in the vocation of a nun that the beneficiary will not earn any salary.

In reviewing an immigrant visa petition, Citizenship and Immigration Services (CIS) 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 sustained that burden.

**ORDER:** The denial of the petition is withdrawn. The appeal is sustained and the petition is approved.