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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

C1

[redacted]

FILE: LIN 03 225 52647 Office: NEBRASKA SERVICE CENTER Date: FEB 24 2005

IN RE: Petitioner: [redacted]
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:

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

The petitioner is a Roman Catholic religious order. It seeks to classify 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 religious sister. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a religious sister immediately preceding the filing date of the petition.

On appeal, the petitioner asserts that the beneficiary's activities prior to her vows should count as qualifying experience.

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 regulation at 8 C.F.R. § 204.5(m)(1) 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)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on July 10, 2003.[1] Therefore, the petitioner must establish that the beneficiary was

[1] We note that the I-360 petition form shows several date stamps, resulting in inconsistent statements by the director with regard to the petition's official filing date. The type of stamp normally considered to show the date of filing shows a date of July 10, 2003, and it is this date that the director cited in the denial notice. In other correspondence, however, the director indicates that the petition was filed slightly earlier, on July 8, 2003. For the purposes of this appellate decision, we consider the filing date to be July 10, 2003. The two-day difference between July 8 and July 10 is, for our purposes, without consequence to the outcome of the decision.

continuously performing the duties of a religious sister throughout the two years immediately prior to that date.

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)(2).

While the determination of an individual's status or duties within a religious organization is not under the purview of Citizenship and Immigration Services (CIS), the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within 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).

In a statement accompanying the initial submission, [redacted] describes the process by which women join the petitioning order:

> The period of formation for a Missionary of Charity Sister is minimally 9 ½ to 10 years before final vows. The states of formation are as follows:
>
> Pre-Aspirancy: 3 to 6 months to learn English and to study the faith.
>
> Aspirancy: 6 months to give the candidate the opportunity to see the life and the work.
>
> Postulancy: 1 year, aims at mutual knowledge between the Society and the postulant.
>
> Novitiate: 2 years, aims at understanding vocation and all that it implies.
>
> Juniorate: 5 years, the Sister in temporary vows is assigned to one of the mission houses to deepen the religious consecration and to train for the apostolate and the mission of the Church.
>
> Tertianship: 1 year, is a special period of Spiritual renewal preceding the final profession of vows.

Sr. M. Rochelle describes the beneficiary's past work experience for the order:

12/99 – 12/01	KOLKATA, India (Prem Dan) – year of Postulancy prayer and study in preparation to go to the novitiate.
12/01 – 12/02	KOLKATA, India – two years of prayer, study and practical training in preparation for first profession of vows; helped in our home for abandoned children (feeding, cleaning)
12/02 to present	CHICAGO, IL – works in our soup kitchen (helping to prepare meals, serving the meals, cleaning) and visits families and the elderly seeing to their spiritual and material needs.

We note that that the beneficiary's "year of Postulancy" correlates to a two-year period (December 1999 to December 2001), while the assertion regarding "two years of prayer, study and practical training" refers to a period of only one year (December 2001 to December 2002). Regardless of these internal inconsistencies, when considered together, the beneficiary's "year of Postulancy" and "two years of . . . practical training" conform to the three-year period from December 1999 to December 2002.

The director instructed the petitioner to "[s]ubmit proof that the beneficiary took her final vows by July 8, 2001." The director noted that "[a]ccording to the documentation submitted, the beneficiary has not taken her final vows." In response, [redacted] states:

> In the past, we were under the premise that our applications would be accepted (and in fact were and were approved) if the applicant had been in our Society for 2 years i.e. two years from the date of her entrance. Then in the last several years some of our applications were returned or denied on the basis that the applicant must have 2 years of first profession (which would be 5-6 years after entering our Society). And now we are being told that the applicant must have 2 years of final profession which would mean that the Sister (beneficiary) has already been in our congregation for at least 12 years (having 5-6 years of formation and 6 years of serving the poor in our various mission houses and living the life of a religious) but is still not considered to be a qualified nun. How can this be possible when the immigration visa for a religious worker has a maximum duration of 5 years?
>
> [The beneficiary] entered our Congregation on January 3, 1999 and made her first profession on December 7, 2002. She has not made her final profession but she has been living the religious life and serving the poor for 5½ years now.

Regarding the claim that it is impossible for a nun to complete her formation under a 5-year nonimmigrant visa, the petitioner has not demonstrated that preparation for final vows within the order must take place in the United States. The petitioning religious order was originally established outside the United States, and the beneficiary first began her postulancy in India, where she remained until December 17, 2002, less than seven months before the filing date.

The director denied the petition, stating that the beneficiary "has not made a permanent commitment to her vocation" and, therefore, cannot have accumulated qualifying experience in that vocation. On appeal, [redacted] repeats the assertion that "our Sisters, whether having first vows or final vows, live exactly the same life, live in the same community and do the same work." She adds that previous petitions with similar fact patterns have been approved and "we were not notified of a change in the laws."

The statute and regulations pertaining to the special immigrant religious worker classification have been essentially the same since 1991. The interpretation of the law, however, has not remained static. Earlier decisions, involving a more lenient interpretation, have not been published as binding precedent decisions. Without the records of proceeding for the cases mentioned, we cannot determine definitively whether they were approved in error.

8 C.F.R. § 204.5(m)(3)(ii)(D) requires the petitioner to submit "evidence establishing that the alien is a nun." For the petitioning religious order in this proceeding, vows are the means by which members demonstrate commitment, as required at 8 C.F.R. § 204.5(m)(2). Therefore, with respect to the petitioning religious order, an individual who has not yet demonstrated commitment through the taking of vows is not practicing a religious vocation for immigration purposes. Her *intent* to do so in the future does not translate into

retroactive eligibility, nor does behaving like a nun prior to the taking of such vows. Just as seminary training is not qualifying experience as a priest, and undergraduate study is not qualifying experience in a professional religious occupation, so it is that time spent as a postulant or novice does not count as qualifying experience as a nun or religious sister. Preparation and study for future status as a priest, professional, or full-fledged nun, regardless of the amount of time devoted to such preparation, do not constitute qualifying experience in those vocations or occupations.

The beneficiary in this proceeding did not make her "first profession of vows" until December 2002. Therefore, even if the beneficiary became a nun upon first profession, rather than upon her final (permanent) vows, this still took place only seven months before the July 2003 filing date.

[redacted] adds "we don't know how we will be able to keep the Sisters in-status if the law requires having 2 years of final vows." While we recognize and respect this concern, our decision must rest on criteria set forth in the law, rather than on the petitioner's needs or concerns outside of those criteria. The fact that the beneficiary's nonimmigrant visa will expire before the beneficiary can accumulate qualifying experience is, simply, a factor outside our scope of consideration.

According to the chronology provided by [redacted] after two years of formation, an individual may be just beginning the novitiate stage. We cannot find that a person just commencing the step "aimed at understanding vocation and all that it implies" has two years of qualifying experience in the vocation. There must, therefore, be some other objectively definable point at which qualifying experience begins. Because the regulatory definition of "religious vocation" includes "demonstration of commitment, such as the taking of vows," we hold that such vows mark the individual's admission into the order. In instances where there is a series of vows, such as the present proceeding, the final vows differ from earlier vows in that they mark the completion of acceptance into the order, rather than a temporary or tentative commitment. Just as 8 C.F.R. § 204.5(m)(2) differentiates between an ordained minister and a lay preacher, we find a substantive, qualitative difference between a novice or junior sister who has not taken her final vows and a fully-qualified sister who has already expressed permanent commitment in the form of final vows.

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.