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U.S. Citizenship
and Immigration
Services

01

[Redacted]

FILE: [Redacted]
EAC 03 212 51781

Office: VERMONT SERVICE CENTER

Date: MAR 16 2005

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:

[Redacted]

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.

Maui Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 nurse's aide. The director determined that the petitioner had not established that the position offered to the beneficiary qualifies as a religious occupation.

On appeal, the petitioner argues that the regulations define the beneficiary's position as a religious occupation.

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 sole issue in the director's decision is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) defines "religious occupation" as 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.

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 at 8 C.F.R. § 204.5(m)(2) 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. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

describes the position offered to the beneficiary:

I . . . am the Superior of the "Gift of Peace," a home for men and women with AIDS and homeless or handicapped men and women. . . .

[The beneficiary] has been a religious worker here at our home for the sick for over two years. . . . His duties include taking care of the sick and dying in our home, namely feeding, bathing, giving medicines, changing diapers, and doing the many humble, small works for the sick. . . . One of the traditional religious function[s] of the Catholic Church is to provide shelter, food and care for the poor who are suffering from serious diseases and [the beneficiary] assists us in these works of mercy.

Various witnesses confirm that the beneficiary provides care to residents of the Gift of Peace facility.

Following a request for additional evidence, states: "The Gift of Peace accepts workers from any denomination. . . . We do not refuse to hire employees who are non-Catholic. However, . . . we find it easier for us to work with employees who understand our way of working."

The director denied the petition, stating that the beneficiary's duties are inherently secular, rather than a function specifically tied to Roman Catholic doctrine. This finding is consistent with the petitioner's assertion that, while the petitioner prefers to hire Catholic workers, it "accepts workers from any denomination." Several nuns work at the Gift of Peace facility, but there is no indication that the petitioner accepts non-Catholics as nuns; rather, the vocation of a Catholic nun is inextricably intertwined with the faith.

On appeal, observes that the regulatory definition of "religious occupation" includes workers in religious health care facilities. The regulation does not define "religious health care facility," and it is not clear that every institution that provides health care, and has ties to a religious organization, is necessarily a "religious health care facility" under the regulations. Workers at entirely secular hospitals and facilities are covered by the standard labor certification process that governs most employment-based immigrant visa petitions. We are not persuaded that other workers, performing exactly the same tasks at church-owned facilities, automatically qualify as religious workers. Such a classification would rest not on the workers' job duties, but on the ownership structure of the facilities.

Consider the hypothetical example of a nurse who has worked since 1994 at a private, secular hospital that was purchased by a religious denomination in 2002. The nurse's duties remain essentially unchanged. It would border on the absurd to state the nurse's experience from 1994 to 2001 is secular and non-qualifying, whereas identical experience, performing the same duties from 2002 onward, qualifies as employment at a "religious hospital." And it would be indefensible to claim that the nurse's pre-2002 experience retroactively became qualifying religious work by virtue of the church's acquisition of the hospital.

Given the above example, there appears to be a discernible, qualitative difference between facilities that provide mainstream health care, and happen to be owned by religious institutions, and facilities that practice an entirely different type of health care grounded in the doctrines or dogmas of that particular denomination. For instance, the views of Christian Scientists regarding the cause of disease, or those of Scientologists

regarding the causes of mental illness, are markedly different from the secular, science-based health care practiced at public and private hospitals.

again describes the beneficiary's duties, but does not explain how these duties relate to a traditional religious function, or differ in any significant way from the basic care that would be provided to the patients at a secular institution.

We note that the petitioner submitted documentation showing that a secular employer, filed a Form ETA-750 application for labor certification on the beneficiary's behalf on April 28, 2001. This indicates that, as late as April 2001, the beneficiary apparently intended to work as an office clerk. This same application form shows that the beneficiary has studied information systems and was actively studying "PC Support" at George Washington University in 2001. He had worked as the manager of a "Gift Shop" since 1992. This documentation indicates that, very shortly before the two-year qualifying period began, the beneficiary was actively pursuing secular employment as well as occupational training in fields entirely unrelated to his current work for the petitioner. As of April 2001, nothing reported about the beneficiary's background suggested any history of religious work or employment in any field related to patient care.

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.