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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **AUG 09 2006**  
EAC 03 265 51723

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: 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 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.

Robert P. Wiemann, Chief  
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 (AAO) 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 (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a “Pastoral Catechist, minister and Missionary, [and] organizer of religious activities.” The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

On appeal, counsel submits additional documentation.

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 issue on appeal is whether the petitioner established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file a Form 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.”

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that 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.

The petition was filed on September 29, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working in the religious vocation or occupation throughout the two-year period immediately preceding that date.

In a letter dated September 25, 2003, the petitioner's pastor stated:

[The beneficiary] is a religious sister and member of the Roman Catholic Church in Taiwan and is to be employed by this Roman Catholic Church in a professional religious capacity to work for the Chinese Apostolate as a Catechist, Pastoral minister and Missionary, organizer of religious activities for all age groups.

In her capacity within the Catholic Church, the beneficiary as a religious Sister will perform the following duties for the Catholic Church:

1. She will serve the parish and the Catholic Chinese Apostolate.
2. She will teach in Chinese religion and the Bible and the doctrines of the Roman Catholic Church to children and adults
3. She will explain the Catechism to Catholic members or gentiles.
4. She will prepare candidates for Baptism and teach them the fundamental Catechism about the sacrament of Baptism.
5. She will prepare the young Catholic children for the sacrament of Holy Communion and Confirmation and she will teach them about the sacraments and other Catholic theories.
6. She will assist at Mass and other religious services.
7. She will hold Bible groups for people of all ages in the Chinese language.
8. She will do other Missionary work within this Catholic community.

In a statement dated September 24, 2003, Sister [REDACTED] the Superior General of The Little Sisters of St. Theresa of the Child Jesus (CST), stated that the beneficiary was a member of the CST, that she had entered the community in 1993, professed her first vows in 1996, and graduated from the Faculty of Theology of Fu-Jen University, in Taipei, Taiwan in 2000. [REDACTED] stated that the beneficiary was assigned to the Corpus Christi and the Immaculate Heart of Mary Churches in Taoyuan, Taiwan for pastoral ministry from 1999 to 2002, and that on August 10, 2002, the beneficiary professed her final vows. According to [REDACTED] she assigned the beneficiary to the United States to work for the petitioner.

On appeal, the petitioner submitted an October 27, 2004 letter from [REDACTED] Vice Superior General of CST, who expounds upon the beneficiary's association with CST. [REDACTED] submitted the following timetable of the beneficiary's service:

- June 2<sup>nd</sup>, 1993 [The beneficiary] entered our Community and became a postulate, she was a sacristan of CST Church and prepared the liturgy for community . . . and practiced spiritual exercises . . . She also served the old sisters . . . did housework and cooked . . .
- August 23<sup>rd</sup>, 1994 She entered novitiate, and took the religious courses 16 hours per week . . . She prepared the liturgy for community . . . and did spiritual exercise. She also cooked for all sisters and did some housework . . .
- August 22<sup>nd</sup>, 1996 She took the first vows, and practiced our Community's pastoral ministry work such as assisting and preparing the liturgy . . . visiting the sick and elderly, and teaching catechism to the children. She still cooked and did some housework . . .
- September 17<sup>th</sup>, 1997 – June 17<sup>th</sup>, 2000 She studied theology at the Faculty of Theology . . . She was a full-time . . . theologian, also cooked and did some housework . . .
- September 1<sup>st</sup>, 1999 – August 31<sup>st</sup>, 2000 She was assigned to the Corpus Christi Church, Taoyuan, Taiwan to be a part-time . . . catechist and Sunday school teacher.
- September 1<sup>st</sup>, 2000 – August 9<sup>th</sup>, 2002 She was assigned to the Immaculate Heart of Mary Church, Taoyuan, Taiwan for pastoral ministry. She was a full-time . . . catechist and assistant pastoral minister. She was a sacristan of the church and prepared the liturgy for community . . . visited the parishioners, the sick, and elderly . . . taught catechism to adults and directed individual spirituality to adults . . . also directed Bible studying 2 hours per week, directed Sunday school 2 hours per week, directed family rosary prayer 2 hours per week, arranged the data of parishioners and assisted at the pastoral meeting of the church 2 hours per week.
- August 10<sup>th</sup>, 2002 She professed the final vows in CST.
- August 11<sup>th</sup>, 2002 – October 31<sup>st</sup>, 2003 She was assigned to be a full-time . . . spiritual director of St Theresa Senior Citizen Center in Taoyuan, Taiwan . . . Her work was related to spiritual and religious cares for the elderly and their families. She visited and took spiritual care of the elderly 24 hours per week. She did administration and official dispatch 4 hours per week, arranged and assisted liturgical celebrations 6 hours per week. She taught catechism and directed spirituality to adults 14 hours per week. Beside, [the beneficiary] had been fulfilled [sic] her duties as a sister in our convent such a leading prayers, setting table . . . est [sic] . . . to serve our community since she became a member of The Sisters of St. Theresa of The Child Jesus.

The evidence reflects that the beneficiary seeks entry into the United States to perform services in the religious vocation of a religious sister or nun. The record also reflects that the beneficiary was in training for her vocation until August 10, 2002 when she took her final vows. Therefore, the evidence reflects that the beneficiary was not engaged in the religious vocation for two full years preceding the filing of the visa petition. A person in training for an occupation or vocation is not working in that occupation or vocation.

Even if the beneficiary were seeking entry into the United States to work, not in her religious vocation as a religious sister, but specifically as a catechist, pastoral minister and missionary, and organizer of religious

activities, as claimed by the petitioner in its letter accompanying the petition, the evidence also does not establish that she has the two years required work experience.

In addition to the letters from the CST, the petitioner submitted copies of letters from the priests of the Immaculate Heart of Mary Church and the Corpus Christi Church. In her decision, the director stated that “the beneficiary’s three letters of employment reference state exactly the same thing, therefore because they appear to be boilerplates their veracity can be called into question.” We withdraw this statement by the director. While boilerplate language may carry less evidentiary weight, this does not lessen the credibility of the documents. We note further that the record contains two copies of the letter from [REDACTED] the priest of the Corpus Christi Church. Therefore the record contains only two letters regarding the beneficiary’s prior employment. Additionally, the beneficiary’s work with the Corpus Christi Church is prior to the qualifying period and therefore is not relevant for the purpose of establishing prior work experience.

In his letter of September 23 , 2003, [REDACTED] priest of Immaculate Heart of Mary Church, stated that the beneficiary was a catechist and assistant pastoral minister with the parish from 2000 to 2002. Reverend [REDACTED] did not provide any details of the beneficiary’s work, including her hours or compensation. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of “a number of safeguards . . . to prevent abuse.” See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged “principally” in such duties. “Principally” was defined as more than 50 percent of the person’s working time. Under prior law a minister of religion was required to demonstrate that he/she had been “continuously” carrying on the vocation of minister for the two years immediately preceding the time of application. The term “continuously” was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term “continuously” also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with

their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

On appeal, the petitioner submitted a copy of an October 27, 2004 letter from Reverend [REDACTED] which he stated that the beneficiary worked full time for the Immaculate Heart of Mary parish. However, as previously discussed, the petitioner submitted no corroborative documentary evidence of the beneficiary's work with the parish. *Matter of Soffici*, 22 I&N Dec. at 165.

Accordingly, the evidence does not establish that the beneficiary was continuously engaged in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

Beyond the decision of the director, the petitioner has not established that it has the ability to pay the beneficiary the proffered wage.

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.

Although the proffered position appears to be that of a nun or religious sister, the petitioner stated that the beneficiary would earn "approximately \$12000 per year" for her services. As evidence of its ability to pay this wage, the petitioner submitted a copy of a letter from Citibank, certifying that the Roman Catholic Congregation in Astoria, New York, maintained three accounts with the bank. The petitioner also submitted a copy of a second letter from Citibank certifying the [REDACTED] Chinese School maintained three accounts with the bank. The record does not reflect any relationship between the petitioner and the other two organizations, although the latter organization has the same mailing address as the petitioner.

The above-cited regulation states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of primary evidence.

The evidence does not establish that the petitioner has the ability to pay the beneficiary the proffered wage. This deficiency constitutes an additional ground for which the petition may not be approved. Additionally, beyond the decision of the director, the petitioner has not established that it is a bona fide non-profit religious organization. This deficiency constitutes an additional ground for denial of the petition.

The regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

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

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code (IRC) of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, if applicable, and a copy of the organizing instrument of the organization, which contains a proper dissolution clause and which specifies the purposes of the organization.

The petitioner submitted a copy of its articles of incorporation and an excerpt from *The Official Catholic Directory* for 2001, reflecting that the petitioner is listed in the directory. However, the petitioner did not submit a copy of a letter from the IRS to the Catholic Church reflecting an exemption for the Church and its subordinate units, or that the petitioner was included under a group exemption granted to the Catholic Church.

The petitioner must either provide verification of individual exemption from the IRS, proof of coverage under a group exemption granted by the IRS to the denomination, or such documentation as is required by the IRS to establish eligibility as a tax-exempt nonprofit religious organization pursuant to 8 C.F.R. § 204.5(m)(3)(i)(B). Such documentation must establish the religious nature and purpose of the organization. The necessary documentation is described in a memorandum from William R. Yates, Associate Director of Operation for CIS, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003):

- (1) A properly completed IRS Form 1023,
- (2) A properly completed Schedule A supplement, if applicable,
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization, and
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The above list is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B), cited above. The memorandum specifically states that the above materials are, collectively, the “minimum” documentation that can establish “the religious nature and purpose of the organization.” Thus, for example, a petitioner cannot meet this burden by submitting only its articles of incorporation. Also, obviously, it is not enough merely for the petitioner to *submit* the documents listed above. The *content* of those documents must establish the religious purpose of the organization.

Accordingly, the evidence does not establish that the petitioner is a bona fide nonprofit religious organization

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

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.