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U.S. Citizenship
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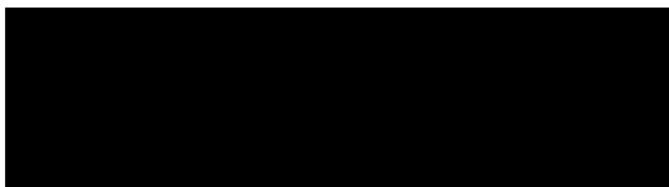
FILE: LIN 05 149 53676 Office: NEBRASKA SERVICE CENTER Date: APR 02 2007

IN RE: Petitioner:
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:



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 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 abbey of the Swiss-American Benedictine Congregation. 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 monk. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a monk immediately preceding the filing date of the petition.

On appeal, the petitioner argues that the beneficiary's student work did not interfere with his duties as a monk.

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 April 18, 2005. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a monk throughout the two years immediately prior to that date.

In a letter submitted with the initial filing, [REDACTED] Abbot of the petitioning abbey, stated:

[The beneficiary] has been studying at [the petitioner's] Seminary and Benedictine Monastery . . . from August 25, 2000 to the present, 4 years and 6 months. . . . He made his temporary vows on September 8, 2002, which made him an official member of the community, and will make his final profession (a life long commitment), on September 12, 2005 at [the petitioning] Abbey. . . .

[The beneficiary] has been in the United States [in] F-1 [nonimmigrant student] status and has maintained his full time student status through his curriculum at the [the petitioner's] Seminary and through his Monastic Studies. He remains a full time student in F-1 status (D/S). The church views [the beneficiary's] time of study as consistent with a monk's vocation and considers [the beneficiary] to have been a full time monk while he has been a full time student, since August of 2000.

The petitioner's initial submission includes excerpts from *The Constitution and the Statutes of the Swiss-American Benedictine Congregation (Constitution)*. One section, "Of Novitiate and Profession, and of the Juniors," reads in part:

The length and character of the period of monastic formation shall be the same for all the monks of a house. . . .

1. Of the Novitiate

Before a postulant is received into the novitiate, the superiors shall inquire . . . whether the requisites of universal law have been duly met.

When the postulancy has been completed, the postulant, after making a retreat . . . , may begin his novitiate, if the chapter has given its consent. . . .

The way of life in the novitiate and its regulations should approximate that of the professed community. . . .

The abbot may dismiss a novice at any time during the novitiate. The novice himself is free to withdraw during the novitiate or at its completion.

When a novice has completed his novitiate, the abbot may admit him to temporary profession if the novice himself so requests, if he is again judged suitable, and if the chapter has given its consent. . . .

2. Of Profession and the Temporarily Professed

There are two stages of public monastic profession: a first stage entered by the profession of temporary vows, and a final stage entered by the profession of perpetual vows. . . . [A]ll temporary vows are simple, while all perpetual vows are solemn. . . .

The purpose of the period entered by temporary profession at the completion of the novitiate is that of providing the temporarily professed monk with the opportunity to enter further into the monastic life and work of his community, so that both he and the community can see better . . . whether he is likely to succeed as a well-integrated monk of that community. . . .

When a novice has completed his novitiate . . . he may be admitted to temporary profession for a period of not less than three years and not more than six years. If it seems opportune, the period of time spent in temporary profession can be extended by the abbot, but only to such an extent that the entire time in which the monk is bound by temporary vows does not exceed nine years.

When the time for which a temporary profession was made has lapsed, the temporarily professed monk who freely requests it and is judged suitable may be admitted to a renewal of temporary profession, or if the chapter gives its consent, to solemn profession; otherwise, he is to leave.

On July 27, 2005, the director issued a request for evidence (RFE), in which the director requested "evidence of the beneficiary's current R1 [nonimmigrant religious worker] status" and instructed the petitioner to "clarify when final vows will be taken." In response, counsel stated that the beneficiary "has never spent any time in R-1 status," having been an F-1 student ever since his entry in 2000.

The petitioner also submitted a letter from [REDACTED] who stated:

[The beneficiary] was issued an R-1 visa . . . on July 19, 2000. . . . At the time of his entry . . . [officials at] the border made the determination that he should be entering on an F-1, coming to the determination that the Consulate had issued an R-1 where they should have issued an F-1. [The beneficiary] was allowed to enter as an F-1 for duration of status dated August 25, 2000. He has remained in F-1 status the entire time and has taken a full course of study in addition to having completed his monastic duties and commitments. . . .

Our records reflect that [the beneficiary] took his temporary vows as a monk on September 8, 2002 and . . . made his final profession of his vows on September 12, 2005."

A previously submitted photocopy of the beneficiary's passport is consistent with [REDACTED] assertions. The visa in the passport reads "R1," but the subsequent entry stamp is marked "F1."

On November 8, 2005, the director issued a second RFE, requesting evidence regarding the beneficiary's college education and his vows. In response, [REDACTED] indicated that the beneficiary "continues his full time undergraduate studies at the Seminary and as such during the semesters of study his full time duties

include being a full time student. During breaks in his studies [the beneficiary] serves the community in other ways as assigned.” [REDACTED] added that he and the beneficiary will later come to a decision “as to whether [the beneficiary] will pursue priesthood.”

The petitioner submitted copies of the beneficiary’s vows, showing that, on September 8, 2002, the beneficiary took vows “until September 21, 2005.” On September 12, 2005, the beneficiary took new vows, in effect “perpetually.” This is consistent with the petitioner’s prior narrative of events.

The petitioner’s response to the second RFE includes a document entitled “The Monastic Formation Program: Postulancy, Novitiate & Juniorate.” This document indicates that the postulancy lasts six months, the novitiate lasts one year, and “The JUNIORATE is the three-year period in which the professed monk returns to full-time academic studies, or is involved in part-time studies and a part-time work assignment, or may be involved full-time in a work assignment.” The juniorate appears to be the “first stage” of profession, during which the monk is under temporary vows rather than permanent vows. A separate document, “The Life & Work of the (New) Senior Monk,” includes this passage:

After the several initial stages of monastic formation – the postulancy (normally six months), the novitiate (one year) and the juniorate (three years) – the junior monk, if he wishes to continue in the monastic life for the rest of his life, and if the monastic community, in its turn, concurs with the monk’s intention, makes a public profession of SOLEMN FINAL VOWS. . . . The monk thereby passes out of the monastic formation program and is thereafter considered as a SENIOR MONK.

Regarding the beneficiary’s full-time studies, the petitioner has submitted a copy of the beneficiary’s academic transcript from spring 2001 through fall 2005. During those years, the beneficiary took 41 courses, only four of which had clearly religious course titles. The other courses have facially secular titles such as “Phonetics,” “Fundamentals of Speech,” “Elementary Spanish” and “Introduction to Logic.” The beneficiary’s course schedule for the spring 2006 semester, still ongoing at the time of its submission, showed six courses, including “Vatican II Documents” and “Seminary Choir II.” The beneficiary was not yet taking these courses when the petitioner filed the petition in April 2005.

Separate from the academic transcript is a Transcript of Monastic Studies, recording the beneficiary’s postulancy in fall 2000 and spring 2001 and his novitiate in fall 2001 and spring 2002.

The director denied the petition on April 12, 2006, stating “the beneficiary’s principal ‘occupation’ during the two-year period was that of a full-time student, not a worker in a religious occupation/vocation.” The director added that, while continued study is permissible so long as it does not interrupt the continuity of qualifying religious duties, such studies are not, themselves, qualifying experience, nor can studies serve in lieu of qualifying experience. The director noted that the beneficiary was not a fully qualified monk during the two-year period immediately preceding the filing of the petition. The director also observed that the beneficiary was an F-1 student, not an R-1 religious worker, during the qualifying period.

On appeal, counsel argues: "The Service has long recognized that in certain circumstances, such as those noted in the decision, the religious education can be seen as consistent with the religious work." Counsel asserts: "The role of a monk . . . who has devoted his life to the vocation and is fully living the monastic lifestyle is certainly distinguishable from the employee in a business setting who wants to count their school work as qualifying work."

Counsel states that the director's "decision emphasizes the fact that [the beneficiary] was on an F Visa was a contributing factor to the conclusion that his primary occupation was student." We disagree that the director "emphasized" the beneficiary's nonimmigrant status. The four-page decision contains only one reference to the beneficiary's nonimmigrant status:

Although the petitioner asserted that it was their belief that the beneficiary had been admitted in R-1 status, the record contains a copy of the Form I-20 A-B signed by the beneficiary of his intent to enter the United States temporarily, and solely for the purpose of pursuing a full course of study at the named school. This document was signed by an authorized representative of [the petitioning] Abbey School attesting that the beneficiary was entering the United States as a student.

The director was not stating, in the above passage, that the beneficiary's F-1 status proved that the beneficiary was solely or primarily a student. Rather, it appears that, in stating the above, the director intended to dispute the petitioner's apparent claim that "it was their belief that the beneficiary had been admitted in R-1 status."

█ states that, throughout his time at the petitioning abbey and its seminary, the beneficiary has lived the life of a monk rather than that of a student. █ states: "Monks who attend [the petitioner's] Seminary follow the same academic courses of study as the other seminarians; they attend classes in the seminary, but otherwise they reside in the monastery and follow the monastery's (rather than the seminary's) daily schedule of prayer, meals, recreation, etc."

It is the petitioner's position that, by living as a monk, the beneficiary effectively was a *de facto* monk. We recall █ earlier statement: "The church . . . considers [the beneficiary] to have been a full time monk while he has been a full time student, since August of 2000." We cannot conclude that the beneficiary has "been a full time monk . . . since August of 2000." The beneficiary began his postulancy in fall 2000. By the petitioner's standard, every alien who takes the first official step toward eventually becoming a monk is already a monk, which would appear to make the multi-year formation process redundant.

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 short, the issue here is not whether the petitioner calls the beneficiary a monk (which is up to the church); the issue is whether the beneficiary qualifies for immigration benefits (which is up to CIS).

Whatever criteria the petitioner may use to distinguish between a monk and a non-monk, for immigration purposes status as a monk depends on more than simply living under monastic conditions. Under CIS regulations, "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. 8 C.F.R. § 204.5(m)(2). Under this definition, an alien who lives like a monk, but who has not demonstrated commitment through the taking of vows, does not qualify for immigration benefits as a monk.

At the time of filing, the beneficiary had not "devoted his life to the vocation." He had, rather, devoted a fixed period of time to the vocation; his temporary vows were set to expire on September 21, 2005. The beneficiary did not take perpetual vows, dedicating his life to the religious vocation, until September 2005, several months after the petition had been filed. This subsequent development does not retroactively cause the beneficiary to have been a monk since April 2003 when the qualifying period began. See *Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998), and *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), which require that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Here, "the necessary qualifications" include being a fully qualified monk. 8 C.F.R. § 204.5(m)(3)(ii)(D) requires the submission of evidence establishing that the beneficiary is a monk. At the time of filing, such evidence did not exist because the beneficiary had not yet taken his final, perpetual vows. The petitioner's own evidence shows that there is no guarantee that a "junior monk" who has taken temporary vows will go on to take permanent vows; the progression is neither automatic nor inevitable. Because the petitioner's religious denomination has obviously established conditions under which an individual can undertake a permanent commitment to a religious vocation, CIS cannot grant permanent immigration benefits on the basis of any lesser, temporary commitment, regardless of the alien's living or working conditions during the period of that temporary commitment.

We emphasize, here, that the stated ground for denial is not a permanent barrier to the beneficiary's future immigration. The beneficiary has now taken his perpetual vows, and provided that he continues to carry on the vocation of a monk, the two-year experience requirement should not be an obstacle in a new petition filed after September 12, 2007. (As is always the case, of course, the petitioner must meet all of the applicable requirements in any given petition.)

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.