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U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUL 23 2007
WAC 06 103 51856

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.

Robert P. Wiemann
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner 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), as a member of the Ananda Monastic Order (also called the Ananda Sevaka Order). The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience in the occupation immediately preceding the filing date of the petition.

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).

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for “good and sufficient cause” where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner’s failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director’s realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho* at 590. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 582.

The Citizenship and Immigration Services (CIS) 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. Therefore, the petitioner must establish that the beneficiary was continuously engaged in a qualifying religious vocation throughout the two years immediately prior to February 10, 2006, which is this petition’s filing date.

8 C.F.R. § 204.5(m)(3)(ii)(D) requires the petitioner to show that, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother. 8 C.F.R. § 204.5(m)(2) defines “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.

In a letter accompanying the petition, [REDACTED], Secretary/Treasurer of the petitioning organization, stated:

[The beneficiary] began her monastic study program in March 1999 and took her Novice vows in the Ananda Monastic Order on January 5, 2004. . . .

[The beneficiary] has been pursuing her religious vocation for the two year period immediately preceding the filing of this petition. . . . [The beneficiary] has been a novitiate [*sic*] in the Ananda Monastic Order since January 5, 2004. She has vowed to offer her life, service, and devotion to God and all decisions are made in conformance with her vows. . . . The IRS has recognized the Ananda Monastic Order as a “religious order” for federal tax purposes. In addition, the Administrative Appeals Unit of CIS held that a “novitiate” who is

preparing for vows as a nun qualifies in a religious vocation, rejecting the notion that she was a "trainee." In Re X, WAC 95.209.50530 (September 18, 1997).

Accompanying the initial filing is a copy of the beneficiary's written vow from January 2004. At the top of the document is the heading "Ananda Monastic Order / Conditional Vow" in large letters. At the bottom of the document, a church official signed the "Acceptance" portion of the form, with the date July 25, 2005. It is not clear whether the beneficiary's novitiate formally and officially began in January 2004, when she signed the vow, or a year and a half later when the official accepted the vow.

The petitioner's initial submission included a letter from the Internal Revenue Service (IRS), dated July 26, 1991, in which the IRS ruled that the Ananda Monastic Order constitutes a religious order for tax purposes. In that letter, the IRS states:

Training for membership in [the] Order involves a prescribed series of training periods totaling seven years before full membership in the Order is possible. . . . [T]he candidates must enter a one-year program of religious study and activity. . . . Following this period is another one-year postulancy period. . . . Next is a five-year novitiate period during which the candidates for membership take conditional vows. . . . If the Church's leaders determine that a novice has completed the novitiate period successfully, they allow the novice to take the final vows of simplicity, self-control, cooperative obedience, and service, which are considered lifetime vows. Less than half of the initial candidates complete all of the training to become "official" members of the Order who take the final vows.

The IRS' 1991 letter is consistent with the beneficiary's own 2004 vows, which are self-described as "Conditional."

The petitioner also submitted documentation relating to the Ananda Sevaka Order, including a copy of the *Guidelines for Conduct of Members of the Ananda Sevaka Order (Guidelines)*.

The director approved the petition on April 26, 2006. On December 28, 2006, the director issued a notice of intent to revoke the approval of the petition. In this notice, the director stated:

Materials in the record refer to a five-year novitiate period during which the candidates for membership take conditional vows. If the Church's leaders determine that a novice has completed the novitiate period successfully, they allow the novice to take the final vows of simplicity, self-control, cooperative obedience, and service, which are considered lifetime vows. Less than half of all the initial candidates complete all of the training to become official members of the Order who take the final vows.

The beneficiary's "five-year novitiate period" was still ongoing at the time of filing in 2006, and the Church leaders will not make a decision as to whether or not the beneficiary has completed the novitiate period successfully until 2009 at the earliest. Because less than half of the initial candidates complete all of the training to become official members of the Order who take the

final vows there is no guarantee that the beneficiary will take the final, permanent vows. Even if she does so, she will not have had two years experience as a full member of the Order until January 2011 at the earliest. Until that time, the USCIS considers an[y] attempt to classify the beneficiary as a special immigrant religious worker based on her potential future full membership in the Order to be premature. The beneficiary cannot now qualify for a permanent immigration benefit based on some future rank or title that she may never attain.

In response, counsel asserted that, at the time of filing, “the Beneficiary had been a Sevaka (or novice) Member of the Ananda Monastic Order for over two years.” Counsel contended that statistics relating to “initial candidates” do not apply to the beneficiary, because “the Beneficiary had approximately seven years of monastic training” at the time of filing in 2006. Counsel then stated: “**Church statistics show that approximately 90% of individuals who took Sevaka Vows between 1991 and 2001 became Life Members**” (counsel’s emphasis). Counsel fails to note that this argument compels a corollary finding that the remaining 10% did not become Life Members.

The quoted statistic comes from a letter from [REDACTED], Spiritual Director of the Ananda Monastic Order. The letter reads, in part:

I am writing to explain the limited distinction between a Sevaka Member of our Order (which would equate with a Novice in most monastic orders) and a Sevaka Life Member. We consider a Sevaka Member to be a fully professed member of our Order. To qualify as a Sevaka Member, a person will have already . . . made a life-long commitment to practicing meditation and selfless service . . . and will have taken Sevaka Vows. There is no distinction in the religious life style, commitment, or vocation of a Sevaka Member and a Sevaka Life Member. In fact, the Sevaka Vows are almost identical to the Life Vows. . . .

The further step of taking Life Vows is an inner decision . . . [that] needs time for deep reflection and, for this reason, an individual is not eligible to take Life Vows until he or she has been a Sevaka Member for at least five years. . . . We make very little outer distinction between a Sevaka Member and a Sevaka Life Member. In fact, our statistics show that approximately 90% of individuals who took Sevaka Vows between 1991 and 2001 became Life Members:

- Total number of individuals who took Sevaka Vows from 1991 to 2001: 284
- Total number of these individuals who took Life Vows: 254
- Percentage of Sevaka Members who took their Sevaka Vows from 1991 to 2001 that went on to take Life Vows: 89.43%

Again, I emphasize that we consider a Sevaka Member to be a fully professed member of our Order and there is no distinction in the religious life style or commitment of a Sevaka Member and a Sevaka Life Member.

[REDACTED] did not explain what is “Conditional” about the beneficiary’s plainly-labeled “Conditional Vow.” Indeed, the phrase “conditional vow” never appears in this new letter. [REDACTED] also failed to explain why

Sevaka Members ever bother to become Sevaka Life Members, or why, indeed, the church bothers to maintain these two separate categories of membership, if there is supposedly almost no difference between them. The letter, therefore, has the appearance of an *ad hoc* explanation.

It is true that the wording of the Ananda Sevaka Order Vow is very similar to that of the Ananda Sevaka Order Life Member Vow, but the wording is not identical. The Life Member Vow contains numerous references to permanent and unconditional devotion, such as “my life always” and “the rest of my life,” which are conspicuously missing from the other vow. Similarly, only the Life Member Vow involves a promise to “abide by the monastic principles of simplicity and self-control” and to “relinquish all sense of ‘I’ and ‘mine’ in my life.”

█'s assertion that 30 novice members did *not* go on to become Life Members supports, rather than refutes, the assertion that the novitiate does not inevitably lead to full lifetime commitment. █ did not say what became of those 30 members. There is no evidence that they continued to live as members of the Ananda Sevaka Order. The *Guidelines* contain this passage: “After a minimum of five years of additional training in the order, Sevakas may be invited to become Sevaka Life Members. Otherwise their acceptance may be deferred, or even mutually redefined.” This indicates that one cannot persist indefinitely as a Sevaka. At some point, the Sevaka must either graduate to Life Member status or, in the alternative, leave the order.

The petitioner submitted a letter from the beneficiary, who discussed her sense of personal commitment to the petitioning community. The beneficiary's attitudes toward the community, and the order, are not in dispute here. The director did not find the beneficiary to be lacking in sincerity. At issue is not the beneficiary's personal attitude but the nature of the relationship between the beneficiary and the religious order. It is simply too soon to tell whether the petitioner will allow the beneficiary to make a truly permanent commitment that would justify permanent immigration benefits.

The director revoked the approval of the petition on February 12, 2007. The director acknowledged the petitioner's response to the notice of intent to revoke, but stated that the petitioner's assertions “contradict evidence in the record which indicate[s] that there is a clear distinction between Sevaka Members (Novice) and Sevaka Life Members (Life Vow Members).”

On appeal, the petitioner submits copies of previously submitted exhibits. Some of these materials were already in the present record of proceeding; others had been submitted originally in support of an earlier, denied petition on the beneficiary's behalf.

The petitioner also submits a brief from counsel. Counsel argues: “Although the Beneficiary has not yet taken Life Vows in the Ananda Monastic Order, she has demonstrated through the taking of Sevaka Vows a lifelong commitment to the Church and a calling to religious life as required by 8 C.F.R. § 204.5(m)(2).” The record amply demonstrates that the beneficiary's current commitment is “Conditional,” a word that appears in large type on the beneficiary's own written vows. Counsel repeats the assertion that “the Beneficiary had an almost 90% likelihood of becoming a Life Member,” and that this evidence “was unexplainably dismissed by the director.” By law, however, the immigrant status sought in this petition is for aliens carrying on a

religious vocation, not aliens with “an almost 90% likelihood” of being able to continue in that religious vocation.¹

CIS would not approve an immediate relative petition for an alien who, after a long-term relationship with a United States citizen, had “an almost 90% likelihood” of marrying that citizen a few years in the future. The same logic applies here. By the petitioner’s own statistics, if the director approved every special immigrant petition filed by “Sevaka Members” who had not yet taken life vows, about one in ten of those individuals would receive permanent immigration benefits, would never take their Life Vows, but would nevertheless be able to remain in the United States indefinitely.

Counsel once again cites an unpublished appellate decision from 1997, in which the AAO determined that a novice nun in the Roman Catholic Church engaged in a religious vocation. 8 C.F.R. § 103.3 states that published precedent decisions are binding in future proceedings, but there is no comparable provision for unpublished decisions. The 1997 decision cited by counsel is not a published precedent decision. The publication, by a third party, of a redacted version of the decision does not endow that decision with the force or authority of precedent. Furthermore, the present record of proceeding does not contain the pertinent evidence that led to the 1997 decision. Therefore, the AAO cannot determine whether the 1997 decision was in error, or whether other distinguishing factors were present.

Counsel contends that the director’s reliance on the 1991 IRS letter was misplaced, because the church has changed since 1991. [REDACTED] states as much in a new letter accompanying the appeal. We note that, when the petitioner first introduced the 1991 letter into evidence, the petitioner offered no caveat that parts of the letter no longer applied. In effect, counsel faults the director for failing to perceive that the petitioner had knowingly submitted outdated evidence. We do not find such an argument highly conducive to a finding in the petitioner’s favor.

Furthermore, even if the petitioner had never submitted the 1991 IRS letter, the record contains the petitioner’s own published materials and documents, which make the same point: novice membership is inherently temporary and conditional, and does not assure eventual permanent membership. Revision of the exact probability of progressing from one stage to another does not remove this objection.

Counsel asserts that “the distinction between a Sevaka Member and a Sevaka Life member is an internal matter for the Church.” While internal church matters are not under the purview of 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. See *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978). Here, the record contains unequivocal and un rebutted evidence, including the church’s own publications, showing that the Ananda Sevaka Order has graduated tiers of membership that require differing levels of commitment, and that individuals who have not yet taken what the petitioner itself calls “Life Vows” cannot remain in the order indefinitely.

¹ We note that the IRS had originally cited the lower probability as evidence that the petitioner operates a *bona fide* religious order. It follows logically, therefore, that the much higher probability claimed by the petitioner now might have influenced the IRS’ finding.

We stress that the findings in this position do not bar the beneficiary from eventually returning to the United States as an R-1 nonimmigrant religious worker, once she has satisfied the foreign residency requirement of 8 C.F.R. § 214.2(r)(7). Furthermore, nothing in this decision should be construed as stating that the beneficiary will never be eligible for classification as a special immigrant religious worker. CIS' position throughout this proceeding has consistently been that the present petition was premature. At the same time, the AAO cautions that CIS cannot promise to approve future petitions, and therefore this decision must not be construed as a binding guarantee that a future petition will be approved. CIS must consider each petition on its own merits.

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.