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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Public Copy

File: EAC-00-028-53638 Office: Vermont Service Center Date: JUL 16 2001

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)

IN BEHALF OF PETITIONER: [Redacted] Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The matter will be remanded.

The petitioner is a religious organization that seeks classification of 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), in order to employ him as a priest in charge of "mission animation."

The director denied the petition finding that the petitioner failed to establish that the beneficiary had satisfied the two-year experience requirement and failed to establish that the proposed position constituted a qualifying religious occupation. The director noted that the basis of his conclusion was that the petitioner's description of the circumstances of employment was "vague and non-descript."

On appeal, counsel for the petitioner argued that the center director erred in the decision and failed to consider the weight of the evidence submitted. Counsel furnished copies of documentation already in the record.

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, 2003, 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, 2003, 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 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 petitioner, the Apostles of Jesus, is described as a "religious missionary congregation" founded in 1968 in a Catholic diocese in Uganda. The petitioner submitted documents indicating that it is affiliated with the Diocese of Allentown, Pennsylvania, a division of the United States Catholic Conference and that it has the appropriate tax exempt recognition through that affiliation. The beneficiary is a native and citizen of Uganda who was said to have been ordained as a priest in the Roman Catholic denomination on June 15, 1980. The beneficiary last entered the United States in August 1996, as an F-1 student to pursue advanced theological studies. He was later granted a change of status to R-1 religious worker on June 8, 1999, to be employed by the petitioner.

In order to establish eligibility for classification as a special immigrant minister, a petitioner must satisfy the requirements set forth in the regulations. The requirements for classification as a minister differ from those of a lay religious worker.

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.

(B) That, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested.

8 C.F.R. 204.5(m) (2) defines, in pertinent part:

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In

all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

Religious occupation means 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.

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) (4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must also state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional religious capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support.

In support of the petition, the petitioner furnished a job offer letter from [REDACTED] as Secretary of the Apostles of Jesus. Also submitted, in pertinent part, is a letter from [REDACTED] asserting that the beneficiary is a priest ordained on June 15, 1980 and a member of the Religious Missionary Congregation of the Apostles of Jesus; an October 1, 1997 letter from the editor of the Official Catholic Directory to the contact person of the Diocese of Allentown stating that the Apostles of Jesus would be included in the 1998 edition "under the *miscellaneous* category;" and a March 25, 1999 letter from the Diocese of Allentown to counsel regarding the Apostles of Jesus tax exempt status under section 501(c) (3) of the Internal Revenue Code.

On review, the center director's characterization of the proposed position as a "religious occupation" was not accurate and his finding that the administrative duties described by the petitioner

would not be qualifying was misplaced. An ordained Catholic priest is considered to be engaged in a religious vocation, not a religious occupation. Incidental studies in furtherance of that vocation is not interruptive of the continuous practice of that vocation. Matter of Z-, 5 I&N Dec. 700 (Comm. 1954). An ordained priest whose duties include official administrative functions on behalf of the denomination is also not interruptive of the practice of the vocation.

However, the director's finding that the petitioner's claims and explanations underlying the petition were insufficiently documented was well-founded. In order to establish eligibility for classification as a special immigrant minister, a petitioner must establish that the beneficiary is an ordained minister in the denomination, establish that he has been continuously and solely carrying on the vocation for at least two years preceding the filing of the petition, establish that he will be continuously and solely carrying on the vocation in the proposed position, establish that a qualifying job offer has been tendered, and establish that the beneficiary will be employed by a qualifying tax-exempt religious organization having a bona fide nonprofit, religious organization in the United States.

In this case, the petition is based primarily on letters from [REDACTED] as Secretary of the Apostles of Jesus. The Apostles of Jesus is represented as a formal affiliate of the Diocese of Allentown, a division of the United States Catholic Conference. The regulations do not promulgate specific documentary requirements, although the petitioner bears the burden of establishing eligibility. Section 291 of the Act.

Upon a review of the record, it must be concluded that the petitioner has failed to meet its burden of proof. The letters from [REDACTED] standing alone, make general statements of fact that are uncorroborated by other evidence in the record. Accordingly, the letters are insufficient to establish that the beneficiary is an ordained priest, is a member of the Roman Catholic denomination, has at least two years of experience as an ordained priest, and has been tendered an authorized offer of employment in the United States. Additional evidence is required. Such evidence may be from an authorized official of the denomination, either from an official of the diocese or from a higher authority of the United States Catholic Conference. This evidence must verify the beneficiary's qualifications as an ordained priest, the offer of employment, and the affiliation of the Apostles of Jesus with the Catholic church. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

The matter will be remanded to the center director in order to allow the petitioner an opportunity to supplement the record. The director shall then issue a new decision. If the decision is adverse, the petitioner may appeal without fee.

ORDER: The decision dated October 23, 2000 is withdrawn.
The case is remanded.