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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS, 3/F
425 Eye Street N.W.
Washington, D.C. 20536

File: [REDACTED] Office: VERMONT SERVICE CENTER

Date: AUG 28 2003

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision 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.

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 that 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 Citizenship and Immigration Services (CIS) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The 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 sustained and the petition will be approved.

The petitioner is a religious order of the Episcopal Church. The petitioner 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 her as a nun.

The director denied the petition for four reasons. The director found that the petitioner failed to establish that it is a qualifying organization, and that the offered position qualifies as a religious occupation. The director further found that the petitioner failed to establish that the beneficiary had the requisite two years of continuous experience in a qualifying religious occupation. The director also found that the petitioner failed to establish that it had the ability to pay the proffered wage.

On appeal, the petitioner submits a statement.

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 beneficiary is a 56-year old native and citizen of the United Kingdom. According to the Bureau's database, the beneficiary entered the United States as a B-2 nonimmigrant visitor for pleasure on July 25, 2000 and departed on May 21, 2001.

The first issue to be addressed in this proceeding is whether the petitioner established that it is a qualifying organization.

8 C.F.R. § 204.5(m)(3) states, in pertinent part, that 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 section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations; or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3).

Initially, the petitioner provided the Bureau with a letter from the Internal Revenue Service (IRS) stating that the [REDACTED] was granted tax-exempt status. The director determined that the address on the IRS letter was different from the address on the petition; hence, the petitioner had failed to establish that it had tax-exempt status. On appeal, the petitioner states that the discrepancy was due to a post office box change and submits another letter from the IRS affirming that the petitioner has tax-exempt status. The petitioner has established that it is a qualifying organization.

The next issue to be addressed in this proceeding is whether the petitioner established that the proposed position constitutes a qualifying religious occupation or vocation for the purpose of special immigrant classification.

8 C.F.R. § 204.5(m)(2) states, in pertinent part, that:

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.

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.

In a letter written by the petitioning organization's Superior, the Sister [REDACTED], wrote the following:

The letter is to certify that [the beneficiary] is a member of the Community of [REDACTED] a religious order of the Episcopal Church in the United States of America, an international religious order located in England. She has been a member of this order for 29 years. At this time she wishes to transfer to the American branch of the order as a religious worker.

Her religious work includes hospital chaplaincy, counseling, and church ministry. All of her work will be under the auspices of the Community of St. John Baptist.

In response to a request for additional evidence, Sister [REDACTED] wrote that:

[The beneficiary] works at the Convent of [REDACTED] [REDACTED] as a musician. She writes music for the church services of the order. She also participates in household duties for the maintenance of the building in which she resides. . . .

[The beneficiary] is in a training program to be a chaplain at Christ Hospital in Jersey City, New Jersey. It is her intent to be a hospital chaplain when she completes the course. This work would be a part of her duties for the Community of [REDACTED].

The director concluded that the evidence is insufficient to establish that the beneficiary is a religious worker.

On appeal, the petitioner submits a letter from the Right Reverend [REDACTED] the Bishop of Newark of the petitioner's denomination. The letter states that the beneficiary has been a member of the petitioner's religious order for thirty years. The petitioner also submits a copy of the beneficiary's vows to the petitioner's religious order.

In review, the petitioner has established that the proffered position is a qualifying religious vocation.

The next issue to be addressed in this proceeding is whether the beneficiary had been continuously carrying on a religious vocation for the two years preceding the filing of the petition.

8 C.F.R. § 204.5(m)(1) states, in pertinent part, that:

All three types of 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 petition was filed on April 9, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least April 9, 1999.

The petitioner submitted a letter from its Bishop, stating that: "[the beneficiary] has been a member of the [petitioner's order] for thirty years." The petitioner submitted a letter from the Assistant Superior of the Community of [REDACTED] in Oxfordshire, England, stating that:

[The beneficiary] entered this community in 1972. [She] passed through the novitiate, and was professed in life vows in 1977. She has therefore been a bona fide member of this community for 30 years. She is at present living and working at the Convent of [REDACTED] which said house is affiliated with our house in England.

The petitioner has established that the beneficiary has been continuously carrying on the religious vocation specified in the petition for the two years preceding the filing of the petition.

The director denied the petition, in part, finding that the petitioner failed to provide sufficient evidence of its ability to pay the beneficiary.

8 C.F.R. § 204.5(g)(2) states, in pertinent part, that:

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 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 annual reports, federal tax returns, or audited financial statements.

In the instant case, the petitioner has not offered a wage to the

beneficiary. The petitioner submitted evidence to show that the beneficiary took a vow of poverty and that the petitioner has been providing for the beneficiary's needs for more than thirty years. The petitioner also provided the Bureau with the petitioner's annual reports. The petitioner has overcome this objection of the director.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has met that burden.

ORDER: The appeal is sustained, and the petition is approved.