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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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



File: LIN 01 050 53064 Office: NEBRASKA SERVICE CENTER

Date: *01/24/03*

IN RE: Petitioner:
Beneficiary:

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 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 the Bureau of Citizenship and Immigration Services (Bureau) 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, Nebraska Service Center. The Administrative Appeals Office (AAO) summarily dismissed an appeal for failure to state the reasons for the appeal. The matter is before the AAO on a motion to reopen. Counsel for the petitioner submitted evidence of a timely submission of a brief in support of the appeal. The motion will be dismissed.

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 that he may serve as an "oblate monk."

The director denied the petition, finding that the petitioner failed to establish that the offered position qualifies as a religious vocation for the purpose of special immigrant classification, or that the beneficiary has had the requisite two years of continuous experience in a religious vocation or occupation.

On motion, counsel for the petitioner asserts that the beneficiary has been employed for the requisite two years, and that the offered position is a vocation.

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 32-year old citizen of Venezuela. According to the petitioner, the beneficiary entered the United States as an H-1B nonimmigrant worker on October 31, 1996. Bureau records indicate that the beneficiary last entered on January 7, 1997 as a visitor.

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

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation or vocation as defined in the regulations.

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.

In this case, a religious superior at the petitioning organization states that:

[The beneficiary] is an oblate monk. As such his "work" is to practice daily meditation on readings from the Catholic bible, other spiritual reading as directed, and participating in the daily common prayer life of the Catholic Church, namely Mass and the Liturgy of the Hours. He is also engaged in the learning and practice of living a Gospel spirituality. . . . [The beneficiary] will be invited to begin the next level as a postulant monk pending favorable response to this petition.

As an oblate monk [the beneficiary] lives a life of religious poverty. As such the Benedictine Order of Cleveland, St. Andrew Abbey, is responsible for all of his expenses, food, clothing, shelter, medical, etc.

The Director of Oblates of the petitioning organization writes that:

[The beneficiary] has been very faithful in fulfilling the requirements of this program: daily meditation on

the scriptures (at least one hour); spiritual reading (at least one-half hour); and the attendance at the monastic prayers (at least one hour). The above activities have been completed on a daily basis.

He has also been faithful at attending monthly meetings with others in the wider parish oblate program (at least three hours/month).

The director determined that the record is insufficient to establish that the position of oblate monk qualifies as a religious vocation. The director further determined that it does not appear that the beneficiary has taken any sort of formal vows to become a monk; rather, the beneficiary is still training to become a monk.

On motion, counsel for the petitioner quotes the Catholic Encyclopedia that provides:

The act of oblation is not a vow but it is a firm resolve and public promise made by those called to greater perfection in the Christian life, and it is accepted and confirmed in a sacred rite approved by the Church.

Counsel argues that the position of an oblate monk qualifies as a religious vocation because it involves a religious commitment that requires living by the rule of poverty.

After a review of the record, it is concluded that the petitioner has not established that the position of "oblate monk " constitutes a qualifying religious vocation.

The evidence is insufficient to establish that the position involves a demonstration of commitment in the religious denomination; therefore, it is not a qualifying religious vocation. The evidence on the record indicates that becoming an oblate monk is a preliminary step that may lead toward becoming a monk. According to the New Catholic Encyclopedia:

Oblates of St. Benedict

The name given to those men and women who formally affiliate themselves with a Benedictine abbey of monks or nuns in order to consecrate more effectively their Christian life in the work according to the spirit of the Benedictine Rule, to share in the prayer and work of the monks, and to strengthen their perseverance by means of this membership in a school of the Lord's service.

* * *

In offering themselves to God, oblates do not take the canonical vows of public religious life. . . . The man or woman who applies to a monastery for acceptance as an

oblate is usually expected to show seriousness of intention over a preliminary period of some months. Then the candidate begins a year of novitiate under the direction of the monastery After one year of perseverance, the oblate makes a solemn public promise, in the presence of the abbot of the monastery, pledging the reformation of his life according to the spirit of the Benedictine Rule and the statutes of the oblates. The act of oblation is not a vow, but it is a firm resolve and public promise made by those called to greater perfection in the Christian life, and it is accepted and confirmed in a sacred rite approved by the Church.

In the instant case, the beneficiary has not begun the novitiate phase of his development or made a solemn public promise. He has not demonstrated a permanent commitment on the level required for the permanent immigration benefit he seeks.

The final 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 December 4, 2000. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation or vocation since at least December 4, 1998.

The petitioner submitted a letter from its Director of Oblates that states that the beneficiary had been involved in its oblate program since September of 1998, spending approximately two and one-half hours on his oblate duties each day and at least three hours each month attending oblate meetings.

The director determined that the petitioner had failed to establish that the beneficiary has the required two years of continuous experience in a qualifying religious vocation or occupation.

The petitioner has not overcome the director's determination on motion. If the beneficiary were not inadmissible as the result of his more than five years of unlawful presence in the United States, he could work for two years in a qualifying religious vocation or occupation in nonimmigrant R-1 status, and he would then meet the requirements for classification as a special immigrant religious worker.

Further, while the determination of an individual's status or duties within a religious organization is not under the Bureau's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within the Bureau. 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).

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 not sustained that burden.

ORDER: The appeal is dismissed.