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**U.S. Department of Homeland Security**

Citizenship and Immigration Services

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CI

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

[REDACTED]

File: [REDACTED] Office: VERMONT SERVICE CENTER

Date: **NOV 17 2003**

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 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 employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4). The petitioner initially indicated that it seeks to employ the beneficiary as pastoral coordinator for lay ministry, but has since indicated that the beneficiary is to serve as assistant director of its HOPE (Helping Other People Excel) Program. The director found that the petitioner failed to establish that the beneficiary is qualified for the position of assistant director; that the denomination recognizes the beneficiary as such; or that the position of assistant director constitutes a religious occupation.

On appeal, the petitioner submits a new letter from a pastor of the petitioning church.

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 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).

8 C.F.R. § 204.5(m)(4) states that each petition for a religious worker must be accompanied by a job offer from an authorized official of the religious organization at which the alien will be employed in the United States.

The regulations at 8 C.F.R. § 204.5(m)(2) contain the following pertinent definitions:

*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.

*Professional capacity* means an activity in a religious vocation or occupation for which the minimum of a United States baccalaureate degree or a foreign equivalent degree is required.

*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.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

CIS therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

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

Rev. Msgr. [REDACTED] pastor of the petitioning church, describes the position offered to the beneficiary:

I wish to offer the job of Pastoral Coordinator to a person with experience in the religious and cultural life of the Spanish speaking community.

In this capacity, she will be responsible for the following services and will work a minimum of 35 hours a week. [The beneficiary] will act as a liaison between the parish community and the priest staff; she will develop a lay formation program responsive to the needs of the Spanish speaking; she will assist the parish community in the celebration of various ethnic, religious and cultural activities; she will provide pastoral assistance to the parish community, specifically in programs of sacramental preparation and catechetical ministry.

Rev. [REDACTED] states that the beneficiary's duties will include working with catechists and examining catechetical material, offering Spanish-language Bible study courses, assisting in planning sacramental celebration, and counseling, among other functions. Rev. Sanchez states "[t]he duties of the position need special skills beyond [those] of an ordinary parishioner. It requires [sic] the services of an individual who is the holder of at least a Bachelor of Arts degree in Religious Studies and/or Theology or a related field, has had exposure to Church ministry and liturgy for at least five years, has good communication skills and can work in a diverse cultural setting."

In a second letter, Rev. [REDACTED] specifies that the position offered is "Pastoral Coordinator for Lay Ministry." He again lists the beneficiary's duties. The two lists are mutually consistent. Rev. Sanchez indicates that the beneficiary "has received an annual salary of \$12,000 in the year 1999; \$14,000 in the year 2000 and \$15,000 in the year 2001," and that in the future the beneficiary "would receive an annual salary of \$25,000" plus benefits. Rev. Sanchez states that the beneficiary "has been employed here since February, 1999."

The director instructed the petitioner to submit additional evidence to show that the beneficiary's duties require specific religious training and constitute traditional religious functions. The director also requested copies of the beneficiary's educational credentials.

In response, Rev. [REDACTED] pastor of the petitioning church (and apparently Rev. Sanchez's successor), states:

[The beneficiary] has been employed by this institution since May of 1997 and will continue to be employed as our Assistant Director of the "Hope Program" (Helping other people excel.) She also holds the position of team member in our Adult Religious Education Program. Her job responsibilities include:

- Operating our Christian outreach program for our immigrant population.
- Instructing candidates in our Sacramental Program and Religious Education Program.
- Assisting in our RCIA Program, which is the instruction course for adults on Catholic faith.

[The beneficiary] has been extensively trained and is well qualified to teach in these fields. She works 40 hours per week at a compensation level of \$627.17 bi-monthly.

Rev. [REDACTED] letter disagrees with Rev. [REDACTED] previous letters with regard to the beneficiary's job title, hours per week, salary, employment starting date, and range of duties. We note that neither of Rev. Sanchez's detailed letters, which account for every hour of the beneficiary's weekly schedule, contains any mention of the HOPE Program.

The record shows that the beneficiary took "perpetual vows" in Mexico in 1987, but was released from those vows in 1998 by authorities in the Vatican. Regarding the beneficiary's training, the record contains copies of numerous transcripts and certificates. The beneficiary completed three years of study at the Salesian Theological Institute from 1984 to 1987. The beneficiary completed "all courses of the correspondent terms and the successful overcoming of the test" at the Risen Christ Salesian Theological Institute in 1990, a summer catechetical course in 1991, and a "Catechetical Actualization Course" in 1992. There is no indication that any of this training yielded the baccalaureate degree which, according to Rev. [REDACTED] is a fundamental requirement for the position sought.

The director denied the petition, stating:

First, the petitioner has not explained the standards required to be recognized as an assistant director in its denomination or shown that the beneficiary has satisfied such standard.

Second, [the petitioner] did not submit a letter from an authorized official of its denomination verifying the denomination[']s recognition of [the beneficiary's] credentials as an assistant director. . . .

Third . . . [t]he petitioner did not describe the beneficiary's theological education qualifying [her] . . . as an assistant director.

The record does not establish that the beneficiary has been and will be employed in a religious occupation.

The director also found that the beneficiary's position does not qualify under the regulatory definition of a minister.

On appeal, counsel states “[a]ll of the requested evidence had been submitted with the original petition and response” and that while the beneficiary’s position does not require ordination, her “prior ordination only makes her more qualified for the position.” Counsel’s comments are general in nature and do not address the director’s specific findings.

Rev. [REDACTED] in a new letter, repeats his earlier claim that the beneficiary “has been employed by this institution since May of 1997 and will continue to be employed as our assistant director of the ‘Hope Program.’” Rev. [REDACTED] does not explain why his predecessor stated that the beneficiary has worked at the church “since February, 1999” in the capacity of “Pastoral Coordinator for Lay Ministry” and never mentioned the HOPE Program. Indeed, the record contains no documentation about the HOPE Program or any contemporaneous evidence to establish that the beneficiary has worked for the church at all. Doubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Rev. [REDACTED] states “[t]he authority to hire non-ordained workers in the Roman Catholic Church is delegated entirely to the pastor of the particular church and requires no review or approval from any other source.” This does not establish that the Roman Catholic Church considers the beneficiary’s principal duties to be traditional religious functions. We have already noted the difficulties that arise from the petitioner’s changing description of what those principal duties are.

Rev. [REDACTED] observes that the beneficiary “served the Church as a nun in a religious order,” which “is clearly an indication of her extensive training.” The beneficiary has, without question, received training first as a nun and then as a catechist, but she serves in neither of those capacities for the petitioner. Rev. [REDACTED] asserts that the beneficiary has “completed extensive studies . . . [in] psychological development, religious studies, children’s education, bi-lingual studies, and courses in teaching the learning impaired,” but apart from the beneficiary’s aforementioned religious training (in the context of her previous work as a nun) the materials submitted with this petition do not document any of this claimed training. In his initial letter, Rev. [REDACTED] stated that the job “requires the services of an individual who is the holder of at least a Bachelor of Arts degree,” but he never specifically claimed that the beneficiary actually has such a degree, and the record does not contain any evidence of such a degree.

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.