



U.S. Citizenship
and Immigration
Services

C/

[REDACTED]

FILE: [REDACTED]

Office: TEXAS SERVICE CENTER Date:

SEP 16 2004

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, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

The petitioner is a Roman Catholic diocese and has submitted evidence that it has the appropriate tax-exempt recognition. It seeks to classify the beneficiary as a special immigrant religious worker in the position of a "[R]eligious [W]orker and/or [S]eminarian" pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4).

The director determined that the petitioner failed to establish the beneficiary was employed in the same capacity as the proffered position for at least the two years immediately preceding the filing date of the petition. The director further determined that the petitioner failed to show the beneficiary's occupation as a seminarian is considered a religious occupation by the Catholic Church. Finally, the director found that the petitioner failed to establish the beneficiary entered the United States for the purpose of carrying on the vocation of a minister or religious vocation or occupation.

The petitioner, through counsel, files a timely appeal. Counsel argues the beneficiary's "religious background, his past pastoral activities and/or experience prior to joining the Archdiocese of Miami, and since upon his arrival" qualify the beneficiary as a special immigrant religious worker.

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).

In this proceeding, the issues of the petitioner's past experience and the prospective job offer are somewhat interrelated, and thus, we shall consider them together.

The regulation at 8 C.F.R. § 204.5(m)(2) offers 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 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.

The regulation at 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 November 14, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious duties throughout the two years immediately prior to that date, and that the beneficiary seeks to enter the United States in order to perform those same duties.

It is eminently clear from the record (for instance, references to “priestly formation”) that the beneficiary seeks ultimately to become an ordained priest, but that the beneficiary has not yet reached the level of qualification necessary to do so, and is continuing his studies in this regard. Pursuant to the plain wording of the statute and regulations, if the beneficiary seeks to enter the United States to work as a priest, then he must have at least two years of experience *as a priest* immediately prior to the petition’s filing date. Experience in lesser positions, coupled with the intention of becoming a priest, cannot suffice. To hold otherwise would clearly be against the intent of Congress. The fact that the church requires some religious duties of seminarians is not sufficient to show that “seminarian” is, itself, a vocation or occupation. In a 1980 decision, the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious studies. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

Because the beneficiary’s current status as a seminarian is an inherently temporary step on the road to the priesthood, and because the beneficiary was not yet a priest at the time of filing, we cannot find that the beneficiary was a qualifying religious worker at the time of filing. At best, this petition appears to have been filed prematurely, and this decision is without prejudice to any future filing, submitted at least two years after the

beneficiary has completed his studies and commenced to carry on the vocation of an authorized (ordained) priest of the Roman Catholic Church.

While the determination of an individual's status or duties within a religious organization is not under the purview of Citizenship and Immigration Services (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 authority 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 remaining issue raised by the director concerns the beneficiary's entry into the United States. Section 101(a)(27)(C)(ii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii), requires that the alien seeking classification "seeks to enter the United States" for the purpose of pursuing a religious vocation or religious occupation. In this instance, the beneficiary did not enter the United States as an R-1 nonimmigrant religious worker. Thus, the director concluded, the beneficiary did not enter the United States solely for the purpose of working in a religious occupation or vocation.

We do not agree with this determination. We interpret the language of the statute, when it refers to "entry" into the United States, to refer to the alien's intended *future* entry *as an immigrant*, either by crossing border with an immigrant visa, or by adjusting status within the United States. This is consistent with the phrase "*seeks to enter*," which describes the entry as a future act. We, therefore, withdraw the director's finding in this regard.

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.