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U.S. Citizenship
and Immigration
Services

C
JAN 21 2005

[Redacted]

FILE: [Redacted] WAC 03 231 50145

Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
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.

Mari Johnson

R Robert P. Wiemann, Director
Administrative Appeals Office

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

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), to be employed as a "Religious Sister."

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).

The regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States." The regulation indicates that the "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."

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 official must describe the terms of payment for services or other remuneration.

The first issue to be examined is whether the petitioner has demonstrated that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for at least the two years preceding the

filing of the petition. Connected with this issue is the question of whether the beneficiary's work for the petitioner constitutes qualifying employment in a religious occupation or vocation.

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

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, fundraisers, 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)(1) states, in pertinent part, that "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 August 7, 2003. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation from at least August 7, 2001.

On the Form I-360, the petitioner indicates that the beneficiary last arrived in the United States on November 12, 1998 as a B-2 nonimmigrant visitor with permission to remain in the United States until August 31, 1999. Thus, any qualifying employment performed by the beneficiary occurred while she was residing in the United States in an unlawful status.

8 C.F.R. § 204.5(m) defines a "religious vocation" as "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 support of the petition, the petitioner states that the beneficiary is "qualified in her religious occupation, having professed as a religious sister by Archbishop Antony of Los Angeles." The petitioner describes the beneficiary's duties and remuneration:

[The beneficiary] is currently solely occupied with religious work at Holy Transfiguration [redacted] in Los Angeles, where her duties include singing and reading at all of the services at the Church, cleaning the church and the church grounds, assisting at the candle desk, assisting the [redacted] Warden in their duties, and performing other tasks for the Church as assigned. For this work, the Church provides her housing assistance, and pays for her clothing and food, as well as providing for her other essential needs.

In a request for evidence issued on August 20, 2003, the director requested the petitioner to submit evidence of the beneficiary's work history and requisite two-years experience in the petitioner's religious denomination, as well as an explanation of how the beneficiary's duties relate to a traditional religious function. Additionally, the director noted that the beneficiary was a "Professed Religious Sister" and

requested that the petitioner "specify the religious congregation the beneficiary belongs to . . . and to state whether the beneficiary is an affiliate, postulant, novice, temporary professed sister or a perpetually professed sister." Finally, the director requested "evidence to corroborate" whether the beneficiary had taken vows.

In response to the director's request for evidence, the petitioner stated that it was "only able to confirm the beneficiary's work history beginning approximately March 9, 2003, as the beneficiary was away for Los Angeles, working and living in a convent in Jordanville, New York prior to that date."

As it relates to the beneficiary's membership in the petitioner's denomination and her pursuit of a vocation, the petitioner stated:

The Church does not provide any of its members' proof of membership. All Orthodox Christians are welcome to join the community and participate in its life. The Rector, when needed, is able to provide a document stating that an individual is a member in good standing in the Russian Orthodox Church and in the parish of the Holy Transfiguration in Los Angeles. Such a statement was made by the Rector regarding the Petitioner in the Declaration dated July 21, 2003.

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Regarding the status of the beneficiary as a [REDACTED] The Orthodox Church, unlike the Roman Catholic Church, does not have religious orders or congregations. Those who wish to follow the monastic life start living it with the blessing of their spiritual father. Those who wish to live in convents do so, going through the stages of postulant, novice, rassophore tonsured nun, lesser schema tonsured nun, and greater schema tonsured nun. Archbishop Antony, the spiritual father of the beneficiary, formally blessed her to follow the monastic life, professing her to the status of a religious sister, with her pledging to keep the monastic vows of poverty, chastity, and obedience. No documentary evidence of this can be provided, as [REDACTED] Los Angeles reposed in July, 1996, and his papers and archives were made inaccessible. However, her status as a professed sister was known by the clergy of the parish and among many of the petitioners.

The director denied the petition on October 24, 2003, determining that the petitioner had failed to establish that the beneficiary's work is in a religious occupation as the beneficiary's duties do not relate to a traditional religious function. The director further determined that the petitioner failed to establish its ability to pay the beneficiary's wage.

On appeal, the petitioner argues the director's conclusion is incorrect as all of the beneficiary's duties "are fully in keeping with those of the traditional religious function of a Professed Religious Sister." The petitioner states:

In the Orthodox Church, [REDACTED] primarily reside in convents. However, also traditionally, [REDACTED] may be assigned to serve at a Cathedral or other large Church, such as our Cathedral in Los Angeles. Professed Religious Sisters are bound by the same vows as tonsured nuns, including the vow of full obedience to the ecclesiastical superiors.

Therefore, all of the duties that they perform, even if some of these duties are not in themselves religious functions, are all part of their ecclesiastical vocation (literally, their calling).

In Orthodox Christian tradition, tasks assigned to monastics, novices, and professed religious brothers and sisters are called "obediences." In monasteries and convents, monks and nuns and professed religious brothers and sisters perform these obediences as assigned, though these may be cooking, or cleaning, or other manual work. This does not mean that monastics are actually hired as cooks or janitors, but that such tasks or obediences are a part of their responsibilities. Fulfilling these responsibilities is an important and integral part of their religious vocation.

In the current case, the beneficiary . . . is not being employed by our Cathedral as a janitor or a maintenance worker, although her assigned obediences may include such work. She is attached to our Cathedral as a Professed Religious Sister, whose work responsibilities are part of her religious calling.

Though both the petitioner and the director refer to the beneficiary's duties in terms of a religious occupation, we find the beneficiary's proffered position as a "Professed Religious Sister" to be a religious vocation. However, we do not find the record establishes that the beneficiary is a professed religious sister or that she has been performing such work for the requisite two-year period. Pursuant to the plain language of the statute and regulation, if the beneficiary seeks to enter the United States to work as Professed Religious Sister, then she must have at least two years of experience as a Professed Religious Sister immediately prior to the petitioner's filing date.

Though the petitioner claims that Professed Religious Sisters are "bound by the same vows as tonsured nuns, including the vow of full obedience to the ecclesiastical superiors," the record contains no evidence that the beneficiary took these vows. Though the petitioner states that the beneficiary was "formally blessed" to follow the monastic life and was professed "to the status of a religious sister," the petitioner also acknowledges that there is "no documentary evidence."

Further, though the petitioner must show the beneficiary's performance of duties as [REDACTED] from August 7, 2001 to August 7, 2003, the petitioner can only account for the beneficiary's work from March 8, 2003. The record remains absent any evidence documenting the petitioner's claim that the beneficiary was "working and living in a convent in Jordanville, New York" for the remainder of the qualifying period. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Because the petitioner has failed to document the beneficiary's vows, we cannot find the beneficiary was a qualifying religious worker, pursuing a vocation, at the time of filing. Further, even if the petitioner could provide documentary evidence of the beneficiary's vows as a Professed Religious Sister, the petitioner has failed to establish the beneficiary was continuously working as a Professed Religious Sister during the requisite two-year period prior to filing.

The remaining issue, as determined by the director, is the petitioner's ability to pay the beneficiary. We find our determination that the beneficiary's proffered position as a Professed Religious Sister qualifies as a vocation renders the director's ground for denial related to the petitioner's finances to be moot; it is inherent that a person following a vocation will not earn any salary. We, therefore, withdrawal the director's finding in this regard.

While the determination of an individual's status or duties within a religious organization is not under the purview of 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 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.