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U.S. Citizenship
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Services

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FILE: [REDACTED]
EAC 03 087 54164

Office: VERMONT SERVICE CENTER

Date: JAN 28 2005

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:



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

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

The petitioner is a Roman Catholic diocese. It seeks to classify 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 perform services as a pastoral minister while studying for eventual ordination into the priesthood. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience in the position sought immediately preceding the filing date of the petition.

On appeal, counsel states that the beneficiary possesses the necessary experience, and that a worsening shortage of priests is adversely affecting the Catholic Church in the United States.

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).

The regulation at 8 C.F.R. § 204.5(m)(1) 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)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on January 22, 2003. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of his intended position throughout the two years immediately prior to that date.

In a letter accompanying the initial filing, [REDACTED] states that the beneficiary has served the petitioner as a pastoral minister "since December 2001." [REDACTED] states that the beneficiary "is presently attending Saint Vincent Seminary, located in Latrobe, PA. He is continuing his Theology study and will then

complete Pastoral Formation in order to receive Ordination. Upon completion of his studies, [the beneficiary] will receive Ordination into the Catholic Order.”

On an application that he had filed with the petitioner, the beneficiary left blank sections intended for “any paid work that you have done” and “your present or most recent full-time job.” Counsel refers to the document as an “application for priesthood,” and in it, the beneficiary expresses his desire to become a priest. A December 3, 2001 letter from [REDACTED], the petitioner’s director of Vocations, indicates “[i]f [the beneficiary] succeeds in his ministry as a Religious Worker, we shall consider the possibility of accepting him as a candidate for the Priesthood.” Other documents also refer to the beneficiary’s aspirations to the priesthood. Given the information in the record, it is evident that the beneficiary seeks to enter the United States in order, eventually, to work as an ordained priest.

The director instructed the petitioner to submit additional documentary evidence to establish the nature and extent of the beneficiary’s religious work during the two-year qualifying period. In response, counsel acknowledges that the petitioner seeks to employ the beneficiary “as a Pastoral Minister in training to become a full fledged Priest. . . . [The beneficiary] has been undergoing extensive training and continuing formation for the priesthood in excess of the past two years.” Employment as a pastoral minister is not the beneficiary’s long-term goal; it serves only to “set a foundation to become a Priest.” With regard to the positions of pastoral minister and priest, counsel also acknowledges that “the two positions are different,” and counsel refers to the beneficiary’s “formation duties as a Pastoral Minister towards becoming a Priest.”

The petitioner’s initial submission contained little substantive information about the beneficiary’s activities prior to his June 2001 entry into the United States. The petitioner’s response to the request for evidence contained more information about that period. [REDACTED] the novice master of [REDACTED] Fathers, [REDACTED] states that, from October 2000 to April 2001, the beneficiary “was admitted as a novice and began this stage of his formation . . . at our Novitiate House.” The record does not indicate what the beneficiary was doing between his April 2001 departure from [REDACTED] Fathers and his June 25, 2001 arrival in the United States.

The director denied the petition, stating that the beneficiary was a student rather than a full-time minister for much of the qualifying period, and is still in training for his intended career, and therefore the beneficiary has not satisfied the two-year continuous experience requirement.

On appeal, counsel states that the beneficiary “has been undergoing extensive training and continuous formation for the priesthood in excess of the past two years.” This is, in fact, a principal justification for the denial of the petition. The record amply and unambiguously shows that the beneficiary seeks to enter the United States in order to carry on the vocation of a Catholic diocesan priest. Section 101(a)(27)(C)(iii) of the Act requires that the beneficiary “has been carrying on such vocation” throughout the two-year qualifying period. Here, the beneficiary has not been carrying on “such vocation.” Rather, he has been undergoing training and formation, toward the eventual goal of ordination into that vocation. We do not deny counsel’s assertion that the beneficiary is “on the direct, traditional and required path of work training as mandated by the church,” but this does not mean that the beneficiary has two years of continuous experience as a priest, any more than a medical school student has experience as a physician. The fact that formation and training are mandatory preparations does not mean that participation in such preparation is qualifying experience. We note that 8 C.F.R. § 204.5(m)(3)(ii)(B) indicates that the petitioner may be required to submit the alien’s certificate of ordination, to show that the alien is a qualified minister. It stands to reason that the petitioner cannot avoid this requirement simply by filing the petition at a time before the alien has been ordained, or before the alien even qualifies for ordination.

Apart from the acknowledged difference between pastoral ministry and the beneficiary's intended vocation as a priest, counsel states that the beneficiary's ministerial work is full-time, comprising "57 hours of work per week in the summer, with the hours adjusted to accommodate his spiritual training during the year." This vague assertion does not demonstrate that the beneficiary's work as a pastoral minister has been full-time on a year-round basis. Part-time ministerial work by a student is not continuous experience as a minister. See *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

Counsel disputes the director's finding that the beneficiary was not continuously employed during the qualifying period, but there remains a gap of several months in 2001. Even if training were qualifying experience, there is no indication that the beneficiary was actively engaged in training or formation during this period, or that he was on temporary leave or vacation. Rather, the record (including statements from both the beneficiary and [REDACTED]) shows that the beneficiary left the Schoenstatt Fathers in April 2001 with no intention of returning, and his work with the petitioning diocese may have commenced as late as December 2001. (The beneficiary originally entered the United States to visit a relative, and only later became involved with the petitioning diocese, and therefore his June 25, 2001 entry date does not mark the beginning of his work in the United States.) While the beneficiary may never have abandoned his intention of entering the priesthood, there is a period of several months during which we can find no evidence that he was actively pursuing that goal. Even if we had concluded that the beneficiary's seminary studies and formation constitute qualifying experience, we would still have found that this lapse, occupying at least several months and perhaps a third of the two-year qualifying period, constitutes a disqualifying interruption in that experience.

Counsel cites documentation showing that there is a growing shortage of Catholic priests in the United States. We do not deny the existence of this shortage, but it is not relevant to the matter at hand. By law, an alien who seeks to enter the United States to work as a priest must have at least two years of experience as a priest immediately prior to the petition's filing date. In this instance, the beneficiary was not yet a priest at the time of filing, and the petitioner has made no secret of the beneficiary's intention to be a priest, with his work as a pastoral minister being only a temporary stepping-stone during his formation. A shortage of priests, however severe, does not change the requirements or procedures for obtaining status as a special immigrant religious worker, any more than a surplus of priests would provide grounds for denying an otherwise approvable religious worker petition.

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.