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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

CI

[REDACTED]

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date: SEP 19 2005

LIN 01 167 50333

IN RE:

Petitioner:

Beneficiary:

[REDACTED]

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:

[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*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, initially approved the employment-based immigrant visa petition. On further review, the acting director determined that the petitioner was not eligible for the visa preference classification. Accordingly, the acting director properly served the petitioner with a Notice of Intent to Revoke (NOIR) the approval of the preference visa petition and his reasons therefore, and subsequently exercised his discretion to revoke the approval of the petition on December 17, 2004. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The Form I-360, Petition for Amerasian, Widow or Special Immigrant, filed with Citizenship and Immigration Services (CIS), indicates that the Holy Virgin Protection Cathedral is the petitioner. The petition, however, is signed by [REDACTED]. Therefore, the Holy Virgin Protection Cathedral cannot be considered as having filed the petition on behalf of [REDACTED] and [REDACTED] shall be considered as the self-petitioner.

The self-petitioner seeks classification 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 head of the Holy Virgin Protection Cathedral's Sisterhood. The director determined that the petitioner had not established that the position qualified as that of a religious worker or that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the visa petition.

On appeal, counsel submits a brief and additional documentation.

Section 205 of the Act, 8 U.S.C. § 1155, states that the Secretary of the Department of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

*In Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

*Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Id.*

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 first issue to be discussed is whether the position qualifies as that of a religious worker. Pursuant to 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work as a religious worker.

The proffered position is that of "Head Sister" of the "sisterhood" of Holy Virgin Protection Cathedral. In a letter dated March 25, 2001, Archbishop Alpy of the Diocese of Chicago and Detroit, stated:

Her major duties will include maintaining sacred vestments and Altar boys' robes . . . the whole process of maintaining vestments requires prayer, special surroundings and a special state of mind. There are similar requirements for the cleaning of the Icons.

She will arrange every gathering at our Parish Hall, whether social or official diocese business . . . .

Also, as a native speaker of the Russian language[, she] will be an excellent addition to our Saturday School Program . . . .

[A] crucial part of the Head Sister's job in the Holy Virgin Protection Cathedral is to foster a sense of community by recruiting volunteer workers as well as instructing and welcoming newcomers to the Church and the Parish.

As soon as [the beneficiary] assumes this position she will be required to gather and unite our parishioners by asking them to assist her in chores, such as preparing Sunday meals.

[Her] working hours will be Thursday through Monday from 9AM to 4PM. Her base annual salary will be \$15,360.

In a letter dated June 25, 2002, submitted in response to the director's request for evidence (RFE) dated April 4, 2002, Archbishop Alypy stated:

The position of Head of the Sisterhood (Elder Sister of the Sisterhood) has a direct connection to the Russian Orthodox religious faith and the person occupying this position has a direct impact on the spiritual well-being of the membership of our Diocese. The position requires knowledge of the religious beliefs of the Russian Orthodox Church.

The Head Sister (Elder Sister) maintains sacred vestments and robes, and these vestments and robes should never be taken outside the Cathedral. The Head Sister in addition is responsible for maintenance of the Icons. These functions are religious in nature, and are performed with prayer in the center of the Cathedral . . . . [A] wood screen separates the altar from the center of the Cathedral, and the Head Sister performs these functions in the center of the Cathedral and in a chamber immediately to the right of the altar . . . . In addition, the Head Sister instructs parishioners in appropriate dress required for attendance of services in the Cathedral, maintains appropriate decorum during services, including maintaining silence and maintaining periods during which parishioners may not walk, may not approach icons, may not light candles, etc. The Head Sister makes and distributes Prosphori, ceremonial bread commemorating the dead or for the health of the living, which ceremonial bread is used as a part of the religious services. She makes special cakes for the Easter celebration. She recruits and instructs new members of the Sisterhood of the Cathedral. The Head Sister and the Sisterhood recruit new parishioners to become active members of our Church. She oversees preparation of all social gatherings, including the Sunday meal following the Sunday service. The Sunday meal follows the service and is taken at about 1 p.m. She welcomes new parishioners to the Cathedral. These activities are integral to the services at the Cathedral.

The Archbishop also stated that the beneficiary assumed the role of Head Sister after the retirement of the previous Head Sister in February 1999, and that she has served in the position on a voluntary basis since that time.

In response to the director's NOIR of November 24, 2004, Bishop Peter, the administrator of the Diocese of Chicago and Detroit Russian Orthodox Church Abroad, stated:

There are no women priests in the Orthodox Church, and the Sisterhood provides an outlet for religious expression for women in our faith. Not every woman in the parish is a member of the Sisterhood . . . .

I am submitting the Statute concerning Sisterhoods in North America, adopted by the Synod of Bishops . . . [in] 1955 . . . Among other duties in the 1955 Statute are visitation of the ill, inquiring after the needy and assisting them, visitation of the places of confinement and prisoner assistance, visitation of the dying, uttering prayers for the dead and caring for their family, ministering to the unbaptised and unwed in order to bring them into the

Church, to provide assistance to the children in out Saturday School, organize collection of clothing and funds for the ill, destitute and handicapped, and to assist in acquiring and distributing theological literature.

The document submitted by Bishop Peter outlines the organization and objectives of the sisterhood, and states that the "sisterhood comprises a component and integral part of the parish and exists in accordance with the parish's charter as a parish organization." The document also indicates that the objectives of the sisterhood are "that those who enter its membership may perfect themselves morally in Christian virtue, in accordance with the teaching of the Russian Orthodox Church" and "to render active aid to its church and to carry out, in a practical manner, the duties of the parish." Included in the duties are the "[m]aintenance of the Church building, both during the divine services and apart from them; care for the vestry; and the adornment of the church."

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 would reasonably be expected to perform services 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. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Citizenship and Immigration Services (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 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.

On appeal, counsel submits a copy of the bylaws of the Russian Orthodox Church Outside of Russia, which authorizes the establishment of a "Sisterhood" whose responsibilities would include cleaning the church, tending to the vestments and other objects in the sacristy, participating in the charitable work of the parish, managing the luncheons and the refectory, and guiding and coordinating the work of its members. Counsel also submitted documentation reflecting the work of sisterhoods in other parishes.

Nonetheless, the documentation does not reflect that the duties of the sisterhood are primarily religious in nature. While the vestments for which the sisterhood is responsible may not normally be taken outside the church, the petitioner submitted no evidence that the work performed on these vestments is religious in nature. Further, the petitioner submitted no evidence of the duties actually involved in caring for the icons of the church. Although members of the diocese indicate that there is some religious ceremony involved in caring for the icons, no evidence submitted established the petitioner's role in the care and the exact nature of the duties involved.

Further, the petitioner has not established that cooking and cleaning within the church have any religious function or significance beyond the normal maintenance of the church and feeding of church members.

Additionally, the petitioner submitted no evidence that the position of "head" or "elder" sister is traditionally a full-time, compensated position within her denomination. Although Archbishop Alypy stated that the beneficiary succeeded someone else in the position, he also stated that the petitioner volunteered her services for over two years following that. The petitioner submitted no evidence that her predecessor or anyone else who has held the position served in a full-time, compensated position.

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).

The evidence does not establish that the position qualifies as a religious worker within the meaning of the statute and regulation.

The second issue to be discussed is whether the petitioner established that the beneficiary was continuously engaged as "Head Sister" for two full years immediately preceding the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file a Form 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."

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on April 25, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as "Head Sister" throughout the two-year period immediately preceding that date.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law, a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term "continuously" also is discussed in a 1980 decision where 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 duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

In the rare case where volunteer work might constitute prior qualifying experience, the petitioner must establish that the beneficiary, while continuously and primarily engaged in the traditional religious occupation, was self-sufficient or that his or her financial well being was clearly maintained by means other than secular employment.

The evidence indicates that the petitioner has volunteered her services with the Holy View Protection Cathedral, and has never been compensated for her services. The petitioner submitted no documentary evidence of any work performed by her during the qualifying two-year period. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Further, the petitioner submitted no evidence to establish that she was not dependent upon secular employment for her support during the two years immediately prior to the filing of the petition.

The record does not establish that the beneficiary worked continuously as "head sister" for two full years preceding the filing of the visa petition.

Beyond the decision of the director, the petitioner has not established that her prospective U.S. employer has the ability to pay her the proffered wage.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

According to Archbishop Alypy, the petitioner will receive an annual base salary of \$15,360, in addition to \$10.00 per hour for any overtime that she is required to work. As evidence of the organization's ability to pay this wage, the petitioner submitted unaudited copies of the organization's financial statements for the period ending December 31, 2001 and a copy of its budget for 2002.<sup>1</sup>

The above-cited regulation states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of primary evidence.

The evidence is insufficient to establish that the petitioner's prospective U.S. employer has the continuing ability to pay the petitioner the proffered wage as of the date the petition was filed.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> The petitioner also submitted financial documentation for the years 1997 through 2000. However, as these documents precede the filing of the visa petition, they are not relevant for purposes of establishing the organization's ability to pay the proffered wage as of the date the petition was filed.