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FILE: LIN 04 041 51938 Office: NEBRASKA SERVICE CENTER Date: JUL 24 2006

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

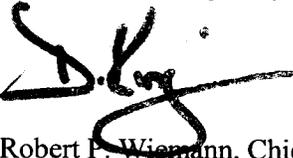
PETITION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



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, Chief
Administrative Appeals Office

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

The petitioner is a Roman Catholic Archdiocese. 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 “an ordained Roman Catholic minister of religion.” The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

On appeal, the petitioner submits a brief and additional documentation.

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 issue on appeal is whether the petitioner established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

Although the petitioner identified the proffered position as that of a “minister of religion,” which appears to be a term of art, its letter of November 25, 2003 indicates that the position is that of an ordained priest.

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 November 28, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a priest throughout the two-year period immediately preceding that date.

In its letter of November 25, 2003, the petitioner stated that the beneficiary was ordained as a deacon on January 29, 2000 and as a priest on April 6, 2002. The petitioner stated:

The Code of Canon Law, the religious law governing the Roman Catholic Church, defines three “orders” of ordained ministry of the Roman Catholic Church: the episcopacy (bishop), the presbyterate (priest); and the diaconate (deacon) (Canon 1009.1). Within each of these orders, individuals (who are ordained) are set apart from the rest of the congregation for special ministry. As stated (Canon 1008):

“(Title VI, Orders) By divine institution some among the Christian faithful are constituted sacred ministers through the sacrament of orders by means of the indelible character with which they are marked; accordingly they are consecrated and deputed to shepherd the people of God, each in accord with his own grade of orders, by fulfilling in the person of Christ the Head the functions of teaching, sanctifying, and governing.”

A bishop performs some of the same ministerial functions performed by a priest, or a deacon, but a deacon is not authorized to perform all of the duties and functions of a priest, nor is a priest authorized to perform all of the duties and functions of a bishop. Nonetheless, all three – bishop, priest, and deacon – share in the special functions reserved for the ordained ministers of the Roman Catholic Church.

The petitioner submitted copies of a document entitled “Internal Ordering of Particular Churches,” which appears to be an excerpt from an unidentified larger document, but presumably the *Code of Canon Law*. A provision of that document states, at Can. 517, section 2:

If the diocesan bishop should decide that due to a dearth of priests a participation in the exercise of the pastoral care of a parish is to be entrusted to a deacon or to some other person who is not a priest or to a community of persons, he is to appoint some priest endowed with the powers and faculties of a pastor to supervise pastoral care.

Can. 519 of the document provides:

The pastor is the proper shepherd of the parish entrusted to him, exercising pastoral care in the community entrusted to him under the authority of the diocesan bishop in whose ministry of Christ he has been called to share; in accord with the norm of law he carries out for his community the duties of teaching, sanctifying and governing, with the cooperation of other presbyters or deacons and the assistance of lay members of the Christian faithful.

The petitioner also submitted a copy of a delegation of authority to deacons in the Archdiocese of Miami. This delegation does not appear to have been applicable to the beneficiary as a deacon in his prior Archdiocese of Reno or with the petitioning organization.

The petitioner asserts that the beneficiary's service as an ordained priest is a continuation of his service as an ordained deacon, as both are ordained ministers within the Roman Catholic organizational structure.

Nonetheless, the statute and regulation require that the alien seeking entry into the United States must have at least two years experience in the religious vocation or occupation for which he or she seeks entry. Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C); 8 C.F.R. § 204.5(m)(3). The evidence reflects that the beneficiary was ordained a priest on April 6, 2002, and therefore clearly does not have the requisite two years of experience.

On appeal, the petitioner argues that, under Roman Catholic law and policy, a deacon meets the regulatory definition of minister and that neither the statute nor the regulation prohibits an organization from having "more than one denominator to establish that the prospective beneficiary is a minister." Nevertheless, the petitioner has submitted no evidence that the Roman Catholic Church equates the position of deacon to that of priest, or that there is a natural progression in the Roman Catholic Church from ordained deacon to ordained priest. The excerpt from the *Code of Canon Law* submitted by the petitioner distinguishes the positions of bishop, priest, and deacon.

Thus, while the beneficiary may be considered a minister within the Roman Catholic Church, the position for which the beneficiary seeks entry is that of an ordained priest, and the petitioner has failed to submit evidence that the beneficiary had two years experience as an ordained priest prior to the filing of the visa petition.

Further, while the determination of an individual's status or duties within a religious organization is not under the purview of the Citizenship and Naturalization Service (CIS) 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 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.