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**U.S. Citizenship  
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FILE: LIN 04 236 50507 Office: NEBRASKA SERVICE CENTER Date: **AUG 15 2007**

IN RE: Petitioner:

Beneficiary:



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.

*Maura Deadrick*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The director treated the petitioner's appeal as a motion,<sup>1</sup> and reopened the proceeding. The director again denied the petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a Christian church of the Ethiopian Orthodox denomination. 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 chief priest. The director determined that the petitioner had not established that the beneficiary possesses the necessary qualifications for the position.

On appeal, the petitioner submits new witness letters and arguments from counsel.

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).

8 C.F.R. § 204.5(m)(3)(ii)(B) requires the petitioner to demonstrate that an alien minister has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the

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<sup>1</sup> With the initial appeal, counsel requested the Service Center to review the appeal as a motion to reopen pursuant to 8 C.F.R. § 103.3(a)(2)(iii) which allows the director to reopen and take favorable action. Although not specifically stated in his decision, as the director did not take favorable action, it appears that the director reopened the matter on his own motion pursuant to 8 C.F.R. § 103.5(a)(5)(ii). Regardless, any argument regarding procedural error is moot as the entire record of proceeding is before us for review on appeal.

clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested.

In a letter accompanying the initial submission, [REDACTED], the petitioner's Parish Council Chairman, stated that the beneficiary had served as the petitioner's chief priest "from 2002 to the present." [REDACTED] added that the beneficiary "fulfills all pertinent qualifications to support our growing parish and has supporting documentation to that effect." The initial submission, however, contained no "supporting documentation" relating to the beneficiary's "pertinent qualifications." The only documentation relating to the beneficiary, other than previously issued visa documents, is a copy of his Ethiopian passport, which identifies his occupation as "Pensioner" (the beneficiary was 66 years old when his passport was issued).

On April 18, 2005, the director requested "a letter from an authorized official of the religious organization in the United States which establishes that the alien has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy." The director also requested "a copy of the alien's certificate of ordination or authorization as a minister of the religious denomination."

In response, [REDACTED] stated that the beneficiary has "distinguished years of experience and credentials as teacher and spiritual leader spanning more than 30 years with the Ethiopian Orthodox church." [REDACTED] also stated that the beneficiary's priestly "title [was] bestowed on him by the Archbishop." To support this assertion, [REDACTED] cited "attachment #2, Certificate of Consecration; and attachment #3, an appointment letter." The Certificate of Consecration indicates that the beneficiary was consecrated as a "Comus (Archimandrite)" on May 7, 2003. The November 22, 2002 appointment letter was signed by [REDACTED] (sometimes spelled "[REDACTED]", Archbishop of the Ethiopian Orthodox Tewahedo<sup>2</sup> Church in the Western Hemisphere and Southern Africa. The letter reads, in part: "[the beneficiary] is hereby appointed as priest-in-charge and Spiritual Administrator of the [petitioning church]."

An August 20, 2002 letter from Archbishop [REDACTED] indicates that the beneficiary "has been a respected monk since the Ethiopian Orthodox Church ordained him." The letter indicates that the Ethiopian Orthodox Church ordains its clergy, and that the beneficiary's ordination occurred before the date of the letter.

On July 23, 2003, the director denied the petition, stating:

Due to the fact that no certificate of ordination was submitted, the Service must conclude that the Certificate of Consecration is the ordination certificate. Based upon this conclusion, it would appear that the beneficiary was not properly ordained when his initial R1 status was granted on November 21, 2002, as this certificate of consecration is dated May 7, 2003. It would appear that the beneficiary does not have the requisite 2-years of experience as an ordained minister in this denomination. . . .

The petitioner has not demonstrated the standards for ordination in its denomination or shown that the beneficiary has satisfied such standards.

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<sup>2</sup> The record contains variant spellings of this word.

The petitioner appealed the director's decision. The petitioner's Parish Council Secretary, [REDACTED] claimed that the Ethiopian Orthodox Church did not customarily issue ordination certificates "until recent times," and that the church gave "greater weight . . . to reputation and credible attestation." [REDACTED] adds: "Within the ranks of the Ethiopian orthodox, 'Comus' is a promotion. This promotion can only be given to one that has attained ordination." We note that *Webster's Ninth New Collegiate Dictionary* defines an "archimandrite" as "a dignitary in an Eastern church ranking below a bishop: *specifically*: the superior of a large monastery or group of monasteries." This definition supports [REDACTED] assertion that the beneficiary was not an entry-level or inexperienced member of the clergy as of May 2003.

The petitioner submitted an August 21, 2005 letter from Archbishop [REDACTED], listing the requirements for ordination and indicating that the beneficiary "[t]ook the vow of chasity [as a monk] . . . on March 5, 1952" and "was ordained a priest in 1953." An accompanying photocopied Certificate of Ordination, identifying [REDACTED] as Archbishop, states that the beneficiary "has been ordained Priest on this 30<sup>th</sup> day of May 1953." We shall revisit this letter later in this decision.

The director reopened the proceeding and on February 22, 2006, the director instructed the petitioner to submit the original Certificate of Ordination dated 1953. The petitioner complied with this request. The original document is no longer in the record, the director having returned it to the petitioner pursuant to 8 C.F.R. § 103(b)(5).

The director again denied the petition on May 10, 2006, noting the pristine condition of the Certificate of Ordination, and stating that the document appears to have been newly created specifically to satisfy the director's request for a copy of the document. The director concluded: "The Service is not convinced that this is a valid document. It appears to have been created merely to comply with the Service's request for evidence." The director found, therefore, that the petitioner had not adequately established that the beneficiary is qualified or authorized to serve in the Ethiopian Orthodox clergy.

The petitioner has again appealed the decision. Counsel states that the Certificate of Ordination was newly created "based upon existing church records," and that there was no attempt or intent to represent the document itself as having originated in 1953. The record of proceeding does not contain copies of these "church records" that are said to confirm the beneficiary's 1953 ordination.

[REDACTED], a Counselor at the Ethiopian Embassy in Washington, affirms the beneficiary's qualifications and asserts that "in Ethiopia the issuance of certificate[s] of ordination is not consistent [with the] manner that is practiced in [the] USA." It is not explained what in this witness' background has led to knowledge of Ethiopian Orthodox ordination practices in the 1950s.

The most significant basis for concern is found in Archbishop [REDACTED] latest letter, submitted previously and resubmitted on appeal. The Archbishop listed the various "Criteria of appointment to the priesthood," one of these criteria is "One who has reached 30 years of age." The beneficiary was not yet 18 years old on May 30, 1953, the claimed date of his ordination. (He was 16 years old in March 1952, when he is said to have become a monk.) If a candidate for the priesthood must have "reached 30 years of age" to qualify for ordination, then the

beneficiary cannot possibly have been ordained as a priest in 1953. If, on the other hand, there exists no such requirement, then the Archbishop's statement to the contrary is necessarily false. Either way, it is not possible to reconcile the "Criteria of appointment to the priesthood" with the beneficiary's claimed ordination date.

Beyond the decision of the director, review of the record reveals another obstacle to the approval of the present petition. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

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 August 20, 2004. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a chief priest since mid-August 2002.

As noted previously, [REDACTED] originally stated that the beneficiary had served as the petitioner's chief priest "from 2002 to the present." At first, [REDACTED] did not specify when in 2002 this employment began, but in a subsequent letter, [REDACTED] stated that the beneficiary "has been a member of the Church since October 2002," which puts the commencement of the beneficiary's employment no earlier than that month.

On the Form I-360 petition, asked whether the beneficiary had ever worked in the United States without authorization, the petitioner answered "No." The beneficiary initially entered the United States as a B-2 nonimmigrant visitor on April 8, 2002. B-2 nonimmigrants are not authorized to work in the United States. Later, the beneficiary changed to R-1 nonimmigrant religious worker status, effective November 21, 2002. Because the beneficiary had no employment authorization between April 8 and November 21, 2002, the petitioner has essentially stipulated that the petitioner did not employ the beneficiary during that period.

Subsequently, the petitioner submitted copies of two appointment letters. One letter, jointly signed by Dr. Assefa and by [REDACTED], reads in part: "we declare the appointment of [the beneficiary] as Arc Priest [*sic*] of [the petitioning] Church to serve as a lead priest." The letter is dated October 2, 2002. This is consistent with [REDACTED]'s assertion that the beneficiary joined the petitioning church in October 2002. The letter does not indicate whether or not the appointment was effective immediately. We reiterate that the record confirms that the beneficiary lacked employment authorization in October and most of November 2002, and the petitioner has certified under penalty of perjury that the beneficiary did not work without authorization.

The other appointment letter, from Archbishop [REDACTED], reads, in part: "[the beneficiary] is hereby appointed as priest-in-charge and Spiritual Administrator of the [petitioning church]." The letter is dated November 22, 2002, the day after the beneficiary became eligible to work as an R-1 nonimmigrant. The Archbishop did not state that the beneficiary had already been working as a priest at the petitioning church. Rather, he stated that

the beneficiary “is *hereby* appointed” to that position (emphasis added). The letter is entirely consistent with the petitioner’s prior indication that the beneficiary never worked in the United States without authorization, and with the evidence of the beneficiary’s November 21, 2002 change of nonimmigrant status.

Depending on how they are interpreted, the letters may disagree, by some seven weeks, as to when the beneficiary began to work for the petitioner. Both letters, however, indicate that the employment commenced less than two years prior to the petition’s August 20, 2004 filing date. Other letters attest to the beneficiary’s work as a priest in Ethiopia, but the beneficiary left that country several months before the two-year qualifying period commenced in August 2002. Thus, the petitioner’s first two submissions contain no indication that the beneficiary worked as a priest during the summer of 2002, and several indications that he did not do so.

At present, the record contains no claim, and certainly no evidence, that the beneficiary worked as a priest in August or September of 2002, and the ambiguous claim that the beneficiary was appointed to work for the petitioner in October of that year is highly questionable because it contradicts several other items that indicate the beneficiary’s work did not begin until late November. The significant interruption in the beneficiary’s qualifying work is, even by itself, a sufficient basis to disqualify the beneficiary and deny the petition.

The appeal will be dismissed 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. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.