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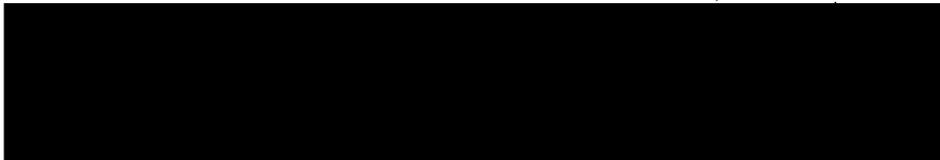
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20 Mass. Ave., N.W., Rm. 3000  
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U.S. Citizenship  
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Services

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: JAN 31 2007  
SRC 06 014 50946

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:  
[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.

2 Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas 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 convent. 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 nun. The director determined that the petitioner had not established that the beneficiary possessed the necessary qualifications as of the filing date of the petition.

On appeal, counsel cites Citizenship and Immigration Services (CIS) regulations at 8 C.F.R. § 103.5(a)(8), which allow the director to treat an appeal as a motion for the purpose of granting the motion. The director declined to do so and forwarded the appeal to the AAO for review.

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)(2) defines "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.

8 C.F.R. § 204.5(m)(3)(ii)(D) requires the petitioner to show that, if the alien is to work in a religious vocation, he or she is qualified in the religious vocation.

Vicar General of the petitioning convent, states:

[The beneficiary] has been part of our Congregation for four years and has been living with us in Miami since 2003. As an active and vital member of our ministries, [the beneficiary] has worked as a Religious Catechism instructor at the local parish. She has also been a Eucharistic Minister and been involved in a weekly prayer service group as part of the Music Ministry. . . .

[The petitioning entity] had reviewed her apostolate, and we confirm her position as permanent. . . .

[A]s a working member of [the petitioning convent], all of her living expenses will be provided for.

In her letter, Sr. [redacted] repeatedly uses the title "Sr." (*i.e.*, "Sister") before the beneficiary's name. [redacted], Paraguay, states in a letter dated August 22, 2005 that the "successfulness of [the beneficiary's] vocation in the Religious Community that she belongs to" makes the beneficiary "an excellent candidate for the religious life." Here, too, the title "Sr." precedes the beneficiary's name.

The initial submission is not entirely clear about the nature of the beneficiary's intended work for the petitioner. For instance, the initial submission specifies no job title. The use of the title "Sr.," the use of the phrase "the religious life" and the fact that the petitioner is a convent all lead to the conclusion that the beneficiary seeks to pursue the vocation of a nun.

On October 31, 2005, the director issued a request for evidence, instructing the petitioner to submit evidence relating to a variety of issues. The director instructed the petitioner to "[s]ubmit evidence clearly identifying how the beneficiary qualifies [for] the proffered job and when the beneficiary met such requirements." In response, counsel states: "[the beneficiary] is a Nun and, therefore, performs a religious vocation. . . . She has served in a religious vocation as a Nun for [the petitioner] since . . . September 14, 2003. Before that, she spent two-and-a-half years completing her novitiate in Paraguay." Counsel asserts that the beneficiary "has successfully completed the religious training to perform the religious vocation of a nun." Counsel discusses the process of becoming a nun:

i. The Novitiate

In the novitiate, a Nun begins her religious training and religious studies. . . .

Canon 645 requires a Nun to show proof of "baptism, confirmation and free status" before she may be admitted to the novitiate. At the end of the novitiate, a novice who is not admitted to "temporary profession" is dismissed and deemed unsuitable to lead a consecrated life as a Nun. A novice who is admitted may then take her vows of poverty, chastity, and obedience and be considered for temporary profession.

ii. Temporary Profession

Canon 656 discusses the requirements to be admitted for temporary profession. . . .

Counsel's discussion of the above process ends with a description of "temporary profession," which, by its very name, bespeaks a temporary rather than permanent situation. Counsel, in this description, repeatedly cites Roman Catholic Canon Law. The petitioner has submitted an excerpt from Canon Law, specifically, Canons 573-606, relating to "Norms Common to All Institutes of Consecrated Life." Canons 646-653 relate to "the Novitiate and Formation of Novices." Canons 654-658 pertain to "Religious Profession." We quote relevant sections here.

Can. 648 § 3. The novitiate is not to last longer than two years.

Can. 653 § 2. At the end of the novitiate, if judged suitable, a novice is to be admitted to temporary profession; otherwise the novice is to be dismissed. If there is doubt about the suitability of a novice, the major superior can extend the time of probation according to the norm of proper law, but not beyond six months.

Can. 655. Temporary profession is to be made for a period defined in proper law; it is not to be less than three years nor longer than six.

Can. 657 §1. When the period for which profession was made has elapsed, a religious who freely petitions and is judged suitable is to be admitted to renewal of profession or to perpetual profession; otherwise, the religious is to depart.

Can. 657 §2. If it seems opportune, however, the competent superior can extend the period of temporary profession according to proper law, but in such a way that the total period in which the member is bound by temporary vows does not exceed nine years.

Counsel asserts that the beneficiary "is amply qualified to serve as a Nun for [the petitioner] on a permanent basis," but provides no documentation of a formal finding to that effect by the petitioner or any other church body. Counsel observes that the beneficiary "has taken the vows of chastity, poverty, and obedience. Otherwise, [the petitioner] would not have deemed her suitable to be a Nun." Counsel fails, however, to acknowledge that these vows are not the sole or final requirement to become a nun. In essence, counsel cites those requirements that the beneficiary has met, while ignoring those that she has not (such as perpetual profession).

In denying the petition, the director quoted Roman Catholic Canon Law (which the petitioner had introduced into evidence), and stated:

It is eminently clear from the record (for instance, references to "novitiate" and "temporary profession") that the beneficiary seeks ultimately to become a perpetual professed nun, but

that the beneficiary has not yet reached the level of qualification necessary to do so, and is continuing her formation in this regard. . . .

Because the beneficiary's current status is an inherently temporary step on the board to the religious formation of a nun, and because there is no evidence that the beneficiary has taken the perpetual profession at the time of filing, we cannot find that the beneficiary was a qualifying religious worker at the time of filing.

The director stated that the denial would be without prejudice to a new petition, filed at least two years after the beneficiary is admitted to perpetual profession. On appeal, the petitioner submits letters from various church officials, stating that the beneficiary performs the duties of a nun and is integrated into the community at the petitioning convent. Counsel argues that "all evidence establishes [the beneficiary] is a nun with the Roman Catholic Church," and that the director "incorrectly inferred from the evidence that [the beneficiary] works in a 'lesser position' than that of a nun, and that she merely strives someday to become a nun." Counsel's arguments in favor of this position are not persuasive. Counsel cites *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978), but that decision relates to a music minister who was found not to be a "minister" *per se*; it does not concern a nun or a religious worker in a comparable vocation.

Counsel also cites the Foreign Affairs Manual (FAM), stating that 9 FAM 42.32(D)(1) N8 contradicts the director's reasoning. Counsel states: "FAM states an alien 'whose activities are such as to indicate engagement in activities which *contribute to furtherance of the . . . vocation, and which are not in any way inconsistent with that vocation*, may be considered to have met the requirement of continuous practice '" (counsel's emphasis). Counsel has taken this excerpt somewhat out of context. The relevant passage reads:

If the consular officer learns that the alien's activities in the immediately preceding two years were not related to religious functions, he or she should review the activities for the two years immediately prior to visa application to evaluate whether or not the alien has been continuously carrying on the vocation of a minister or other professional or religious worker. For example, a minister whose activities are such as to indicate engagement in activities which contribute to furtherance of the ministerial vocation, and which are not in any way inconsistent with that vocation, may be considered to have met the requirement of continuous practice as a minister. Activities considered acceptable for fulfilling the two-year requirement include: seminary study, teaching at a religious academy, spiritual/pastoral counseling, etc.

The FAM's example presumes the alien to be "a minister," rather than "an aspiring minister" or "a candidate for the ministry." The example also presumes "the alien's activities in the immediately preceding two years were not related to religious functions." Notwithstanding a general reference to "seminary study," the FAM does not clearly indicate that an alien's pursuit of fundamental credentials constitutes qualifying experience. We also note that the FAM is a Department of State publication, which is not binding on CIS employees.

Counsel states: "The *Catechism of the Catholic Church* . . . classifies nuns as people who 'have consecrated their whole lives to prayer.'" Counsel argues that the beneficiary "consecrated her entire life to prayer during the two years immediately preceding the filing of the petition." Two years, however, is not the beneficiary's

“entire life” and therefore counsel’s assertion is an oxymoron. The beneficiary may well have consecrated herself entirely to the religious life during the period of her novitiate and her temporary profession, but these phases are, by nature and by definition, temporary. If the beneficiary has not yet entered into perpetual profession, she has not yet consecrated her entire life.

Certainly the beneficiary has been working toward the goal of perpetual profession, which is why the director encouraged the petitioner to refile after a suitable interval, but she had not yet done so as of the filing date. 8 C.F.R. § 204.5(m)(3)(ii)(D) requires evidence that an alien seeking classification relating to a religious vocation must be qualified in the religious vocation. The record does not support counsel’s contention that the beneficiary has already undertaken “the permanent, full-time, and binding obligation to dedicate her entire life to serving the Roman Catholic Church.” Canon Law, which counsel had cited previously as authoritative evidence, shows that “temporary profession” is exactly what the term implies. In her temporary profession status, the beneficiary is qualified to perform the duties of a nun, but only for a limited period of time, after which time she must either enter permanent profession or leave the order. The petitioner seeks a permanent immigration benefit for the beneficiary, and considering that Canon Law makes explicit provision for “permanent profession,” it is reasonable to expect a permanent commitment in line with the permanent benefit sought. The beneficiary has not yet entered permanent profession, and the petitioner has not promised or guaranteed that the beneficiary will do so. The road to permanent profession has several steps, and an aspiring nun can falter at any one of them.

We note, here, counsel’s prior assertion that the beneficiary’s novitiate lasted “two-and-a-half years.” According to Can. 648 § 3, “[t]he novitiate is not to last longer than two years.” The relevant portions of Canon Law, submitted by the petitioner and cited by counsel, list only one justification for extending the novitiate six months beyond the two-year maximum. Can. 653 § 2 allows for an extension of up to six months if “there is doubt about the suitability of a novice.” Thus, counsel’s own words imply that there has been some doubt about the beneficiary’s suitability, an observation we offer simply to emphasize that not everyone who begins the formation process completes it successfully.

We concur with the director’s decision, and with the director’s assertion that this issue is not a permanent barrier to eligibility. 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* at 607.

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.