

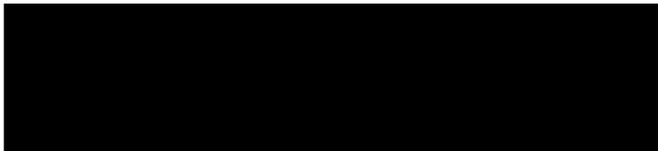
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U.S. Citizenship  
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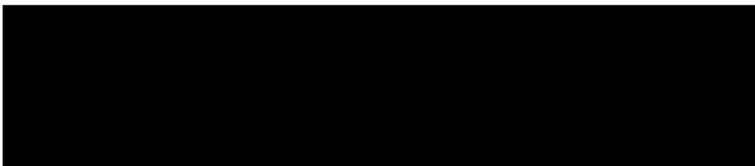
Petitioner:



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.

*Mauna Deadrick*

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Robert P. Wiemann, Chief  
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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a local congregation of a Roman Catholic religious order. 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 care minister. The director determined that the petitioner had not established that the beneficiary possesses the necessary qualifications for her position, or that the position qualifies as a religious occupation.

On appeal, the petitioner submits a statement 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).

The principal issue in this proceeding is whether the petitioner seeks to engage the beneficiary's services in a qualifying capacity. First we must distinguish between a religious vocation and a religious occupation. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

*Religious occupation* means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious

broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

*Religious vocation* means 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.

In two separate letters in the record, [REDACTED] Superior of the petitioning entity, stated that the beneficiary “was a vowed member” of the petitioning order. The reference to vows is consistent with a religious vocation. Similarly, an older document in the record refers to the beneficiary with the title “Sister.” The director has noted the absence of evidence relating to the beneficiary’s vows.

The record, however, indicates that the beneficiary has left the petitioning order. As we have noted, Sr. Authier has consistently stated that the beneficiary “was [not “is”] a vowed member” of that order. Also, a September 16, 2004 letter from [REDACTED] Superior General of the petitioning organization in Rome, Italy, indicated that the beneficiary “was a member of the Congregation of the Religious of Jesus and Mary from February 5, 1978 to January 31, 1993. . . . Since her arrival in the United States in July 2003, [the beneficiary] has continued to serve our community as a pastoral and personal care assistant at our retirement center in Plainville, Ma.” Furthermore, the *Constitutional Texts* of the petitioning order, included in the record, require that members of the petitioning order live communally under vows of poverty. The beneficiary, however, earns an hourly wage and lives in an apartment in Lincoln, Rhode Island, rather than at the petitioner’s facility in Plainville, Massachusetts.

Given the above facts, we find that while the beneficiary may have been a member of the petitioning order at one time, she is no longer a member of that order. If her work for the petitioner is to qualify her as a special immigrant religious worker, it must be as a religious occupation rather than a religious vocation.

Also under consideration is the requirement at 8 C.F.R. § 204.5(m)(3)(ii)(D) that the petitioner show the alien beneficiary to be qualified in the religious occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the type of work to be done relates to a traditional religious function. Citizenship and Immigration Services 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.

[REDACTED] described the beneficiary’s duties:

She will continue to minister among the retired and semi-retired sisters at their convent. . . . She will continue to participate in our pastoral care ministry to senior sisters by: 1) preparing the daily Eucharist (the Mass); 2) accompanying the sisters to and participating in the Liturgy of the Mass; (3) bringing communion to bed-bound sisters and praying with them as needed; 4) welcoming the lay men and women who participate in the convent’s Mass; 5) visiting the

sister[s] in need on a daily basis to spend dedicated time one on one, and attend to each one's unique needs; 6) praying the Rosary with individual sisters in their rooms as needed; and 7) offering a supportive and spiritual presence and companionship to sisters in their senior years. . . . These activities . . . are directly related to the traditional religious function of the pastoral care ministry.

stated that the beneficiary "has the requisite education, experience and qualifications required" for the position, but she did not specify what those requirements are. The record shows that the beneficiary completed coursework at a "Nurses Assistant School" in the 1970s. This training appears to be directly relevant to the beneficiary's current work for the petitioner.

The director, in denying the petition, did not discuss the beneficiary's credentials, instead simply stating the conclusion that the petitioner has not shown the beneficiary to be properly qualified for her position. With regard to the nature of the beneficiary's work, the director stated only that the petitioner failed to show that "the beneficiary's duties, or those of the proffered position, require specific religious training or a full-time commitment."

With regard to the "full time" issue, the director did not discuss pay receipts in the record which show that, in most weeks, the beneficiary has worked 35 hours or more at the petitioner's facility in Plainville.

After careful and prolonged consideration of this issue, the AAO finds that the "training" issue has received a disproportionate amount of weight in adjudications of special immigrant religious worker petitions. Obviously, when a given position clearly requires specific training, 8 C.F.R. § 204.5(m)(3)(ii)(D) requires the petitioner to show that the alien possesses that training; but the issue of training should not be a primary factor when considering the question of whether that position relates to a traditional religious function. Of greater importance is evidence showing that churches or other entities within a given denomination routinely employ paid, full-time workers in comparable positions, and that those positions do not embody fundamentally secular tasks, indistinguishable from positions with secular employers.

We believe that the issue of the nature of the beneficiary's work merits further exploration. The petitioner's facility in Plainville appears to be, in essence, a retirement home and/or nursing home for elderly nuns in the petitioning order. The beneficiary herself, on her 2004 income tax return (reproduced in the record), identified her occupation as "care giver." This description, coupled with her documented training as a nurse's assistant, suggests that the beneficiary is essentially a nurse's assistant in her current job. This avenue appears to be worth pursuing. The vague and general wording of the director's prior decision, however, did not afford the petitioner due notice that the nature of the beneficiary's work (rather than the "religious training" required for it) would be at issue.

A key point that the director should attempt to ascertain is whether or not the petitioning entity restricts employment of "pastoral care ministers" to Roman Catholics. If one need not be Roman Catholic to perform the duties of the position, then it becomes very difficult to claim that those duties relate to traditional Roman Catholic religious functions. It may be instructive for the director to attempt to obtain a list of the petitioner's employees, including job titles and descriptions, and job advertisements and/or other materials used to recruit

workers for the “pastoral care minister” position. The use of words such as “pastoral” and “minister” in the job title are not presumptive evidence that the position is inherently religious. If the beneficiary’s principal duties address the physical or medical needs of elderly sisters, then it is not intuitively obvious that the beneficiary performs religious duties restricted to Roman Catholic workers, rather than secular duties in what happens to be a Roman Catholic facility.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director’s decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.