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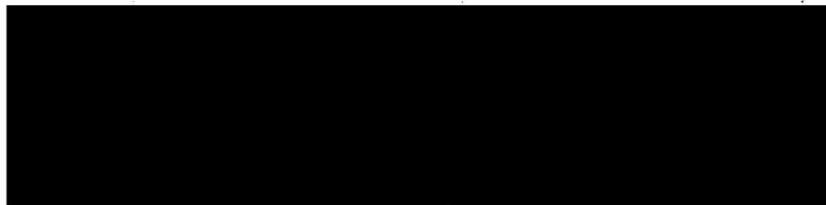
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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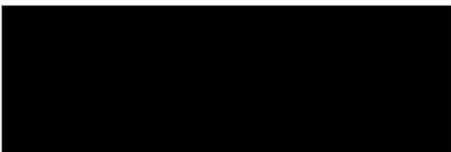
Petitioner:

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.

2 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) summarily dismissed the petitioner's appeal from that decision. The AAO has reopened the proceeding on its own motion in order to consider the appeal on its merits. The appeal will be dismissed.

The petitioner is a Roman Catholic church. 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 its director of religious education. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a director of religious education immediately preceding the filing date of the petition.

The AAO summarily dismissed the petitioner's appeal because, at the time, a promised brief was not contained in the record. The AAO reopened the proceeding after the brief surfaced. Now that the brief is in the record, the matter can proceed.

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)(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 May 13, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a director of religious education throughout the two years immediately prior to that date.

In a letter accompanying the initial filing, [REDACTED] stated:

[The beneficiary] has been working at our parish as Teacher and Secretary for our Religious Education Program. She has worked with us in this capacity since 1998 and continues to do so. She teaches classes for our children in grades 2 and 3. She teaches class from 3:30 to 4:30 on Monday and Tuesday and also Monday evenings from 7:30-8:30 P.M. She also teaches our Spanish children on Saturday from 10:30 A.M. to 12:00 Noon. During the time she is not teaching she performs clerical duties connected to the Religious Education Program.

She is paid \$300 a week as salary. [The beneficiary] is supervised by our Religious Education Coordinator, Sister [REDACTED] OP.

Sister O'Neill stated that the beneficiary "has taught class for me and done secretarial work since 1998."

On November 13, 2002, the director instructed the petitioner to submit additional evidence to "demonstrate that the qualifying religious work has been and will be full-time." The petitioner's response included [REDACTED] assertion that the beneficiary "is presently receiving \$10 per hour as salary." [REDACTED] did not discuss the beneficiary's schedule in detail. The statement that the beneficiary earns "\$10 per hour," coupled with [REDACTED] prior assertion that the beneficiary receives \$300 per week, indicates a 30-hour work week.

The petitioner submitted copies of four canceled checks issued to the beneficiary between December 21, 2002 and January 22, 2003, in amounts between \$310 and \$400. These checks fall after the two-year qualifying period that ended on May 13, 2002. The petitioner, at the time, did not submit any checks or other payroll documents from the qualifying period, nor did the petitioner even claim that such documents existed at all.

Income tax returns that the beneficiary and her spouse jointly filed show that the couple's sole reported income in 2000 was \$56,005 in "Business income." In 2001, the couple reported \$24,392 in "Business income" and \$1,418 in "Wages, salaries, tips, etc." On both returns, under "occupation," the beneficiary's spouse is listed as "Self Employed"; all of the reported business income derived from "Computer and Electronic Repairs." The beneficiary herself is identified as a "Housewife." Therefore, if the beneficiary was the petitioner's paid employee during 2000 and 2001, her tax returns are worthless as evidence of that employment because, on those returns, she concealed her employment and failed to report her church income.

As shown above, the tax returns do not show that the beneficiary was employed at all in 2000 or 2001. In this context, it is highly relevant to consider the following comments in Fr. Nee's letter of February 20, 2003:

The Religious Education program in a Catholic parish is primarily a volunteer program. This is much different than the Catholic School System operating in any Diocese. . . .

On Parish level, a religious education program teaches our children religion for an hour or two a week. The children attend Public School each day. Teachers are chosen from a pool of volunteers. . . . The program is limited by volunteer response.

It is unusual for a teacher to receive payment. They may if they are especially well trained or Bi-lingual. The decision to hire rests with the Pastor of the parish. Salary is also determined at the local level.

The director denied the petition on May 5, 2003, stating:

[The beneficiary] is being hired mostly as a secretary, clerical worker and part time teacher. It appears that [the beneficiary] has been in a volunteer program only. There is no physical evidence that [the beneficiary] has been working for you for the past two years as a full-time religious worker. You have only started paying her for her services since December 2002. This is six months after her petition was filed with us. There is no evidence of previous payment before December 2002.

The record does not establish that the beneficiary has the required two years of experience in the religious occupation.

On appeal, counsel states:

Since 1998, [the beneficiary] began paid employment for the petitioner, primarily as a religious instructor. She also served as the "secretary" for the religious education department. In that capacity, she assists in running the office clerically, that is answering phones [and] typing correspondences.

By 1999 her major responsibilities, however, centered around preparing curriculums for the entire religious education department (Exhibit C).

Exhibit C is a copy of [redacted]'s letter from April 10, 2002. This letter does not support counsel's version of events. In that letter, [redacted] specified that the beneficiary devotes only four and a half hours each week to teaching, with the balance of her time devoted to "clerical duties." There is no indication that the beneficiary's secretarial duties diminished over time. On the contrary, in another old letter resubmitted on appeal, [redacted] stated in the other letter that the beneficiary "has . . . developed into a fine secretary for the program." Therefore, the letters contradict rather than corroborate counsel's unsupported claims.

The petitioner submits a copy of a card indicating that the beneficiary was "commissioned a Special Minister of the Eucharist" on April 21, 2001. There is no indication that this title had any effect on the functions she was paid to perform for the church. If it had no such effect, it is irrelevant. If the opposite is true, it still cannot show two years of qualifying experience because the beneficiary received this credential after nearly half of the 2000-2002 qualifying period had elapsed. The record contains no evidence about the functions of

a Special Minister of the Eucharist. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 2, 4 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner submits copies of checks dating from between November 1999 and March 2003. Considering that the petitioner, previously, had not even mentioned that these checks existed, the director cannot possibly be faulted for failing to consider them. Even if the petitioner had submitted these checks earlier, they would not have supported a finding of eligibility, as we shall now explain.

The petitioner issued these checks about twice a month, in gradually increasing amounts. Most of the earliest checks are for \$120; many checks from 2001 are in amounts near \$200. By 2002, the biweekly checks were usually in amounts between \$300 and \$400 each. These checks show that the petitioner never paid the beneficiary \$300 per week, as claimed in the petitioner's initial submission. For much of the time, the amount is closer to \$300 per month, a rate of pay that indicates part-time rather than full-time employment. Around the time the petitioner filed the petition in mid-2002, the beneficiary received \$350 every two weeks, equivalent to \$175 per week.

Beyond the amounts shown on the checks, the checks show only *that* the petitioner paid the beneficiary during the qualifying period. They do not establish *why* the petitioner paid the beneficiary. The letters that the petitioner has submitted, and resubmitted on appeal, indicate that the bulk of the beneficiary's duties are secretarial, and that religious education teachers in the church are usually volunteers. Put together, the evidence most readily supports the inference that the beneficiary was a part-time church secretary who volunteered as a teacher for a few hours each week. Pursuant to 8 C.F.R. § 204.5(m)(2), administrative functions are secular and non-qualifying for special immigrant religious worker classification. Inconsistencies and contradictions in the record preclude us from accepting, at face value, the assertion that the beneficiary was first and foremost an educator who performed only occasional ancillary secretarial duties. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988).

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.