U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

C-1

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JUN 23 2006

IN RE: Petitioner: [redacted]
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:

[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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office 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, 8 U.S.C. § 1153(b)(4), to perform services as a seminarian/abbot. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary.

On appeal, counsel maintains that the beneficiary performs qualifying religious duties as a seminarian/abbot, and that the Catholic church recognizes the beneficiary's work as a vocation.

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;
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> (ii) seeks to enter the United States--
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> > (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
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> > (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 Code of 1986) at the request of the organization in a religious vocation or occupation; and
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> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

In this proceeding, the issues of the petitioner's past experience and the prospective job offer are somewhat interrelated, and thus we shall consider them together.

The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

> *Minister* means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

> *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.
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> *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.

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 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 May 9, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious duties throughout the two years immediately prior to that date, and that the beneficiary seeks to enter the United States in order to perform those same duties.

the petitioner's director of vocations, states that the beneficiary pursued "philosophical and theological courses from 1996 to 2001 at Grand Seminary Notre-Dame in Port-au-Prince, Haiti. . . . Currently, [the beneficiary] seeks to pursue a priestly vocation with the [petitioning archdiocese]." states that the beneficiary has "engaged in the coordination of religious education programs for children and adults at St. Dominique [Parish] since 1996, continued his engagement at Notre Dame Haitian Catholic Center in Miami, Florida, and since 2001 at Notre Dame Catholic Church, Miami, Florida."

offered the following description of the beneficiary's work: "[The beneficiary] instructed young people and adults on Sacred Scriptures, ran meetings for the parents of children attending religious education . . . ministered to the home bound, coordinated the Sunday liturgy and worship in the Haitian language, distributed Holy Communion, and prepared individuals to become members of the Catholic Church." In a separate letter, asserts that the beneficiary "has advanced through the canonical sequence of religious orders as Seminarian, Eucharistic Minister, Lector and Server and continues his Religious, ministerial work through teaching of catechism, youth pastoral ministries, counseling and serving at religious celebrations."

With regard to the beneficiary's activities in Haiti, several witnesses in Haiti assert that the beneficiary was a seminary student from 1996 to 2001. Bishop of Jacmel states that the beneficiary "spent six years as a seminarian for the Diocese of Jacmel; one year in the spiritual program at Mazenoud/Camp Perrin, two years of philosophy and three years of theology classes at Notre Dame Grand Seminary in Port-au-Prince. Additionally, he has performed several pastoral activities in parishes and/or other institutions of the Catholic Church." The emphasis on the beneficiary's studies, rather than on his unspecified "pastoral activities," suggests that the beneficiary was primarily a seminary student in Haiti, rather than a full-fledged priest pursuing supplemental education. of the Commission for Vocations of the Haiti, states that the beneficiary "may well begin to take some steps to continue his development in view of the priesthood ministry."

The director instructed the petitioner to submit further information about the beneficiary's work history and the position offered to the beneficiary. In response, counsel states that the beneficiary "works in a religious vocation/occupation." This assertion is unhelpful because the regulations offer distinct and mutually exclusive definitions of "religious occupation" and "religious vocation." Counsel also refers to the beneficiary as a "seminarian/religious worker." A seminarian is a *student* at a seminary; therefore, a seminarian is neither practicing a vocation nor engaged in an occupation. Rather, a seminarian is preparing for *future* entry into the vocation of the priesthood.

The director denied the petition, stating that the petitioner has not established that the beneficiary has accumulated the required experience, or that the petitioner seeks to employ the beneficiary in a qualifying occupation or vocation. On appeal, counsel maintains that the Catholic Church considers seminarians to be in "pursuit of a priestly vocation," and therefore they should be considered qualifying religious workers. There is no evidence that the beneficiary has been ordained, or that he has, since at least two years before the filing date of the petition, performed the full range of duties of an authorized member of the Catholic clergy. Rather, counsel, on appeal, stipulates that the beneficiary enrolled in another seminary in 2002.

It is eminently clear from the record (for instance, references to "priestly formation," "priestly vocation" and "advance[ment] through the canonical sequence") that the beneficiary seeks ultimately to become an ordained priest, but that the beneficiary has not yet reached the level of qualification necessary to do so, and is continuing his studies in this regard. Pursuant to the plain wording of the statute and regulations, if the beneficiary seeks to enter the United States to work as a priest, then he must have at least two years of experience *as a priest* immediately prior to the petition's filing date. Experience in lesser positions, coupled with the intention of becoming a priest, cannot suffice. To hold otherwise would clearly be against the intent of Congress. The fact that the church requires some religious duties of its seminarians is not sufficient to show that "seminarian" is, itself, a vocation or occupation. In a 1980 decision, the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

Because the beneficiary's current status as a seminarian is an inherently temporary step on the road to the priesthood, and because the beneficiary was not yet a priest at the time of filing, we cannot find that the beneficiary was a qualifying religious worker at the time of filing. At best, this petition appears to have been filed prematurely, and this decision is without prejudice to any future filing, submitted at least two years after the beneficiary has completed his studies and commenced to carry on the vocation of an authorized (ordained) priest of the Roman Catholic Church.

While the determination of an individual's status or duties within a religious organization is not under the purview of Citizenship and Immigration Services (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*, 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.