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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: NOV 04 2004

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The director rejected the appeal, and the petitioner filed a second appeal to contest the rejection of the first appeal. The matter is now before the Administrative Appeals Office (AAO) on appeal. The first appeal will be reviewed on certification and dismissed on its merits. The second appeal will be rejected.

Before we discuss the merits of the appeal, we will briefly address the procedural issues concerning the rejections of the two appeals. The initial appeal was filed by counsel, accompanied by a Form G-28, Notice of Entry of Appearance as Attorney or Representative, signed by counsel and by the beneficiary. The director concluded that counsel represented the beneficiary, not the petitioner, and that therefore the appeal was not filed by an affected party (as 8 C.F.R. § 103.3(a)(1)(iii)(B) defines that term). The director accordingly rejected the appeal as improperly filed.

Counsel filed a second appeal, accompanied by a new Form G-28 signed by an official of the petitioning entity. There is, however, no regulatory provision to allow for a petitioner to appeal a rejection (as opposed to a denial or revocation). We must, therefore, reject this second appeal.

The director, in rejecting the first appeal, appears to have relied on 8 C.F.R. § 103.3(a)(2)(v)(A)(*2*)(*i*), which states that an appeal filed by an attorney without a proper Form G-28 is improperly filed. The director, however, failed to take into account the subsequent regulations at 8 C.F.R. § 103.3(a)(2)(v)(A)(*2*)(*ii*) and (*iii*), which indicate that, in an instance where the appeal lacks a proper Form G-28 but is otherwise properly filed, the attorney must be given an opportunity to provide the missing Form G-28. The director erred by rejecting the appeal without first attempting to procure that document. Now that counsel has provided the document, we can proceed with adjudication based on the merits of the appeal.

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

*Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 582.

The petitioner is a Catholic school for students from preschool to eighth grade. 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 liturgical services coordinator, computer laboratory instructor, and director of day care and summer programs. The director determined that the petitioner had not established that the beneficiary's position qualifies as a religious occupation. This finding necessarily implied the corollary finding that the beneficiary did not have the requisite two years of continuous work experience in a qualifying religious occupation immediately preceding the filing date of the petition.

On appeal, counsel argues that the director failed to take into account the beneficiary's liturgical duties, and the religious nature of the subject matter that the beneficiary teaches.

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 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 January 23, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying duties throughout the two years immediately prior to that date.

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.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation at 8 C.F.R. § 204.5(m)(2) states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples as shown above. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

Citizenship and Immigration Services (CIS) therefore 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.

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

In a joint letter submitted with the initial filing, [redacted] Pastor of St. Columba [redacted] parish administrative assistant, state that the beneficiary "will be the School Liturgical Services Coordinator and the School Computer Laboratory Instructor." The letter contains no description of the beneficiary's duties. The initial letter also does not discuss the beneficiary's past experience in any detail. The letter indicates only that the beneficiary "has served the Roman Catholic Church in the United States continuously and without interruption for the past two years." The letter further indicates that the beneficiary "will be assigned to [the petitioning school] . . . as soon as his legal status permits," implying by omission that the beneficiary had not yet been assigned there as of the date of the letter (December 10, 2001). If the beneficiary was already there in December 2001, then it is meaningless or redundant to state that the beneficiary "will be assigned" to a position that he has already filled.

On May 17, 2002, the director requested a detailed description of the beneficiary's work history, position and duties. In response, [redacted] states:

> [The beneficiary's] duties and responsibilities include the following: Coordinator of the school's Liturgical Services and Religion, Teacher for computer learning for all grade levels, and Director of the school's Daycare Program. . . .

As Coordinator for Liturgical Services and Religion, [the beneficiary's] primary role is the on-going Catholic formation and spiritual awareness of our students. He is responsible for planning the school's weekly Eucharistic Liturgy. He prepares students for the weekly Masses educating them on the Liturgies and the Liturgical Readings. [The beneficiary] requires approximately 5 hours per week to perform the functions of this position.

As a member of the teaching faculty for the computer laboratory, [the beneficiary] has the unique opportunity of relating with various ages of our students thus enabling him to follow through each individual's spiritual development. He engages students in a variety of learning activities that promote overall development and well-being that contribute to their spiritual growth formation. Lessons are designed to further Christian values and behavior such as personalizing prayers and designing prayer cards using graphic arts and other appropriate computer applications. [The beneficiary] requires approximately 25 hours a week to perform the functions of this position.

As the Director for Daycare and Summer Programs, [the beneficiary] provides a positive, supportive and caring environment for students in the Before and After School Care Program. Students are engaged in activities that are designed to encourage teamwork, cooperation and respect for Daycare teachers and fellow students thereby enhancing their sense of values. [The beneficiary] requires approximately 10 hours a week to perform the daycare function during the regular school year and additionally 30 hours a week for 8 weeks during the school's summer program.

All of the above responsibilities require full time dedication of [the beneficiary] to the nurturing of Christian values integrated in all aspects of the child's school life not only in 'religion subjects' but in the total classroom and after-school environments.

Regarding the beneficiary's past work history, [redacted] states that the beneficiary "has continuously performed his religious functions in our school . . . since September 1, 2000 to the present (School Years 2000-2001 and 2001-2002). Prior to this period, from August 30, 1999 to June 21, 2000, [the beneficiary] carried out his religious functions at the Holy Trinity School . . . where he was the full time 7th grade teacher."

The director issued a notice of intent to revoke, stating "[a]ctivities such as teaching general education courses and computer science do not constitute qualifying work experience in a religious occupation." In response, Rev. Mullarkey asserts that "Catholic Schools . . . evolve around the **importance of integrating the Catholic faith with the educational process**" (emphasis in original).

The petitioner quotes various sources to establish that the advancement of the Roman Catholic religion is a primary function of Catholic schools in the United States, and that this function pervades all classes, not only those expressly dedicated to religion. We will address this argument in greater detail later in this decision, in the context of the appeal. Suffice it to say that these are general arguments about Catholic schools, rather than specific assertions about this particular beneficiary, the implication being that *every* teacher at a Catholic school is a "religious worker."

Rev. Mullarkey observes that the beneficiary "and his students begin and end classes with a prayer," that the beneficiary "designs his lessons and activities based on weekly readings from the Liturgy of the Word," and that "students are then asked to express the Gospel through computer projects." Rev. Mullarkey adds that the

beneficiary "uses Christian-based computer programs for his classes" and "Catholic-inspired bulletin boards, posters and other classroom decorations."

The beneficiary's most overtly religious function appears to be his role as "teacher-in-charge of school liturgies." The petitioner has admitted, however, that this function occupies only about an hour a day, and is plainly not an "occupation" in its own right. The only religious component claimed for beneficiary's involvement with day care is "Christian art projects."

claims that teaching in a Catholic school amounts to a vocation. While various individuals and institutions may use the term "vocation" in this way, for immigration purposes a given position is a "vocation" only if it conforms to the definition of a "religious vocation" at 8 C.F.R. § 204.5(m)(2). The critical issue is the nature of the terms of employment, rather than the label arbitrarily applied to that employment. Within the context of the Roman Catholic church, nuns and monks practice a religious vocation, bound to the church by permanent vows and typically living in a non-salaried environment. The beneficiary, in contrast, is employed in an occupation.

The petitioner submits some background information about catechists (who, by regulation, work in a qualifying religious occupation), and states that "Catholic elementary students . . . obtain religious education and spiritual growth from professional teachers/catechists who . . . every day inculcate the teachings of the Catholic faith in all aspects of the curriculum." The petitioner does not overtly claim that the beneficiary is a catechist, nor does the petitioner demonstrate that the term is synonymous with "Catholic school teacher." The reference to "teachers/catechists" does not blur the line between the two distinct occupations.

With regard to the beneficiary's work at Holy Trinity School, asserts that the beneficiary was "the 7th grade teacher and Religion teacher." This is consistent with the petitioner's earlier descriptions of the beneficiary's work at Holy Trinity School. The petitioner has submitted nothing from the Holy Trinity School to confirm this account, but taken on its face, the petitioner's repeated assertions do not indicate that the beneficiary was ever a coordinator for liturgical services or director of day care at Holy Trinity School, or that the beneficiary's work at that school primarily involved computers or a computer laboratory.

The director revoked the approval of the petition, stating that there is no evidence that the beneficiary has worked as a catechist. The director added that being a teacher at a Catholic school does not automatically make one a religious worker, and that teaching fundamentally secular subjects is not religious instruction, even if the beneficiary strives to conform that teaching to Catholic values and philosophy. Because the director found that the beneficiary's work does not constitute a qualifying religious occupation, it necessarily follows, by extension, that the beneficiary's past experience is not qualifying experience in the religious occupation.

On appeal, counsel asserts that the director "overlooked the integral role that [the beneficiary] plays in his function as a liturgy instructor," and seemingly attempts to portray the beneficiary's liturgical work as his principal responsibility. Counsel does not discuss the fact that the beneficiary's liturgical work makes up only a small minority of the beneficiary's working hours. Counsel also asserts that the beneficiary's work in the computer laboratory is, essentially, that of a catechist. At the time the petitioner filed the petition, there was no claim at all that the beneficiary is a catechist, and subsequently the petitioner has only used the term "catechist" in the context of general statements about teachers at Catholic schools. Counsel maintains that the beneficiary does not teach students *how* to use computers, but rather "teaches catechism through the use of computers." Counsel cites various previously-submitted background documents, but nothing to establish the

specific curriculum of the classes taught by the beneficiary or to show that a "School Computer Laboratory Instructor" is not an instructor who happens to use Catholic-related materials to build computer skills, but rather a catechist who happens, incidentally, to use computers. We note that, in a previous submission, Rev. ndicated that "not only do [the beneficiary's students] learn their lessons – they learn . . . spiritual values." This distinction makes no sense if the lessons in question were, themselves, those same "spiritual values." had indicated that "students learn . . . computer programs." The injection of religious or spiritual material appears, from these descriptions, to be secondary, in much the same way that states "[i]n mathematics, teachers use religious icons and objects in counting and sorting. For the higher grades, teachers also use geometric figures with Catholic and religious significance."

It is significant that the words "catechist" and "catechism" did not even appear in the petitioner's original descriptions of the beneficiary's duties. The assertion that the beneficiary "instructs the children on the Sacraments, Scripture readings, and important Catholic rites" comes only from counsel, and the assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (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 majority of the beneficiary's work schedule consists of teaching a subject that, by itself, has not been shown to be inherently religious. Therefore, his work as a computer teacher cannot be held to constitute religious instruction. There is no evidence that the Roman Catholic Church considers such teachers to be religious workers, or even that an individual has to be Catholic in order to teach these subjects in Catholic schools.[1] If the petitioner could hire a non-Catholic to perform the same functions as the beneficiary, then it is unacceptably arbitrary to assert that a Catholic computer teacher at a Catholic school is a religious worker, whereas a Mormon or Baptist computer teacher at a Catholic school is not a religious worker. Agreeing to a code of conduct that conforms to Catholic philosophy is not sufficient to make an individual a religious worker for immigration purposes.

Catholic schools maintain an environment of constant exposure to religion, with the express purpose of strengthening the faith of Catholic students and, to a lesser extent, evangelizing non-Catholic students. Without this component, it would be difficult to classify Catholic schools as religious organizations. That being said, we cannot find that *every* teacher at a Catholic school is carrying out a traditional religious function, particularly when we consider that Catholic schools across the United States entrust that function to non-Catholics. The insertion of some degree of religious content into inherently secular subjects, for example

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[1] A provision in the beneficiary's employment agreement indicates that the beneficiary "agrees to give Christian witness in his/her personal as well as professional life," but this is not tantamount to a requirement that the teachers must be Catholic. The petitioner, in making its arguments, has quoted sources from Catholic dioceses across the United States, thus implying at least some degree of uniformity within the church, and stipulating that general school information from other dioceses is applicable, to some extent, to the petitioning school. According to the information published by the Archdiocese of Milwaukee, being a Roman Catholic is *not* a requirement to teach at Catholic schools. *See* http://www.archmil.org/askus/ShowFAQ.asp?ID=613&cat=4&subcat=42, which states "[t]eachers in Catholic schools are not required to be Catholic in order to teach in a Catholic school." A job application for teachers in the Diocese of Wilmington, Delaware (http://www.cdow.org/appdirections.html), asks whether the applicant is Catholic, but does not indicate that a "no" answer would disqualify the applicant. The Diocese of Sacramento indicates that "[n]on-Catholic teachers serve at many schools in our Diocese" (http://www.csdsac.org/jobs.htm). Policies may vary from diocese to diocese, but the above information proves that exclusive hiring of Catholic teachers is not a fundamental church requirement. The web site of the Diocese of San Diego offers a link marked "Applying to Teach in Catholic Schools," http://www.diocese-sdiego.org/Personnel%20Forms/Teaching%20Applications.htm, but this link was inactive as of October 20, 2004. The web site of the petitioning school, http://www.stcolumbasandiego.com/school.htm, is listed as "no longer available on this server."

by having students use computers to make prayer cards, cannot suffice to transform such teaching into religious instruction.

Furthermore, with regard to the beneficiary's experience during the 2000-2002 qualifying period, the beneficiary's duties at the petitioning school appear to differ substantially from his claimed duties as a 7th grade teacher at Holy Trinity School. Therefore, apart from the question of whether the beneficiary's work is a religious occupation, it is far from clear that the beneficiary performed essentially the same work throughout the two-year qualifying period. For instance, the petitioner has stressed the beneficiary's work as liturgical services coordinator, but there is no indication that the beneficiary performed a similar function at Holy Trinity School. The regulations at 8 C.F.R. § 204.5(m)(1) and (3)(ii)(A) require that the beneficiary must have carried on *the* vocation or occupation, rather than *a* vocation or occupation, indicating that the work performed during the qualifying period should be substantially similar to the intended future religious work. The underlying statute, at section 101(a)(27)(C)(iii), requires that the alien "has been carrying on such . . . work" throughout the qualifying period. An alien who seeks to work in occupation A has not been carrying on "such work" if employed in occupation B for the past two years. Counsel strives to assert that the beneficiary is not merely a "grade school teacher," but that is exactly the role that the beneficiary is said to have fulfilled at Holy Trinity School.

The petitioner has not persuasively established that the beneficiary has worked, or will work, in a qualifying religious occupation. We reject outright the contention that the beneficiary works in a religious vocation. We find that the director was justified in revoking the approval of the petition.

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.