U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

NOV 23 2004

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date:

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:

SELF-REPRESENTED

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 employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal, reopened the matter on the petitioner's motion, and denied the petition on its merits. The matter is now before the AAO on a motion to reconsider. The motion will be granted, the previous decision of the Associate Commissioner will be affirmed and the petition will be denied.

The petitioner is a religious society. 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 prophet. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a prophet 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. The AAO affirmed the director's findings.

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 October 2, 2000. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a prophet throughout the two years immediately prior to that date.

With regard to the nature of the beneficiary's position, the regulation at 8 C.F.R. § 204.5(m)(2) defines "religious occupation" as an activity which relates to a traditional religious function. "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.

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).

In its denial notice, the AAO stated:

> The director . . . noted that, during the two-year qualifying period, the beneficiary has been engaging in "learning and training" that are "preparatory" to future work as a prophet. Training and preparation do not constitute actual experience in a religious occupation. Furthermore, the petitioner has stated that the beneficiary "has had to abstain from ministering prophesy" ever since he learned that he was not authorized to work in the United States, which indicates an interruption in work that must, by law and regulation, be continuous throughout the two-year qualifying period. . . .
>
> In line with [case law] and the intent of Congress, it is clear . . . that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and salaried. To hold otherwise would be contrary to the intent of Congress.

[redacted] of the petitioning entity states, on motion, that the beneficiary's "vocation has been performed without a single day officially off for over 5 years," but she also states, in the same paragraph, "we admit to a less then perfect fulfillment" of the two-year requirement. Ms[redacted]lso states that the petitioner had received no useful instructions on the difference between a religious *occupation* and a religious *vocation*, and that that AAO should regard the beneficiary as a worker in a religious vocation. The AAO, however, already considered this possibility, stating:

> If "prophet" were an occupation, then the beneficiary would in fact be hired and paid a regular wage, even if the beneficiary would rather use a word other than "hired." If, on the other hand, "prophet" is a vocation, then there ought to be some indication of formal, permanent commitment beyond the petitioner's general assertion that the beneficiary senses a divine calling to prophecy. This issue remains unresolved. . . .

Ms.[redacted] on motion, responds to the above finding, stating "How can the examiner imply that all we've provided is a general assertion of a feeling, when on the record are 4 signatures, given by 4 council members, including its president, attesting very specifically that the beneficiary is in possession of specific one of a plurality of spiritual gifts . . . ?" Ms.[redacted] also indicates that the beneficiary has manifested "the presence of a gift, not a calling," and that "we don't take vows." Nevertheless, the regulation defines "religious vocation" as "a calling to

religious life evidenced by the demonstration of commitment . . . , such as the taking of vows." Such vows are not uncommon in the petitioner's Roman Catholic denomination, and the church has formal procedures in place for the initiation of members into various vocations. The AAO's previous decision includes this regulatory definition, in full, and therefore the petitioner has unquestionably been advised of that definition. The petitioner's assertion that the beneficiary possesses "a gift, not a calling" does not supersede the regulations, and, as a secular body, the AAO must be bound by its own regulations rather than by Roman Catholic doctrine. A formal demonstration of commitment, in the form of recorded vows, can be demonstrated by empirical evidence. A "gift" is, to say the least, much more difficult to substantiate. The matter at hand in this proceeding is not whether the beneficiary possesses a divine gift, but whether he qualifies for immigration benefits. If the beneficiary has not made some kind of formal commitment, comparable to monastic vows, then the petitioner has not shown that the beneficiary's activities fall within the regulatory definition of a religious vocation.

Ms. discusses the known "prophecy" and its derivative verb, "prophesy," in biblical terms, and asserts that biblical passages contradict some of the AAO's findings. Again, here, the petitioner has sought a secular benefit for the beneficiary, and we must rely on secular regulations rather than religious scriptures. Ms. discusses the standards to which a prophet must adhere, but there is scant evidence that the Roman Catholic Church, at the institutional level, recognizes some of its present-day workers as "prophets" in the way the beneficiary is described. The petitioner still has not overcome the earlier finding that the actual nature of the beneficiary's work as a prophet is ill-defined.

The petitioner had earlier indicated that the beneficiary has spent much of his time in training and preparation for future work as a prophet. The AAO had observed that *training* in a given occupation or vocation is not qualifying *experience* in that occupation or vocation. Ms. argues, on motion, that the beneficiary has been performing most of the duties of a prophet, apart from "ministering" which, without valid immigration status, would be an unacceptable breach of ethics. Here, again, the lack of consistent, coherent information as to what it is, exactly, that a prophet *does* is a liability. Many of the beneficiary's described "duties" involve study and introspection rather than demonstrable, verifiable actions. We cannot grant permanent immigration benefits based primarily on an alien's stated desire to engage in contemplation, prayer and reflection. Congress recognized the possibility that the special immigrant worker category may be subject to abuse, and it can be exceedingly difficult to ascertain whether an alien is engaging in this type of introspection, or merely claiming to do so in order to obtain immigration benefits. (This is by no means an accusation leveled at this particular alien, but rather a general observation to explain why we must rely on empirical evidence.)

The thread of the petitioner's arguments on motion is, at times, difficult to follow. Considered as a whole, the petitioner's arguments do not demonstrate that the AAO erred in upholding the director's denial of the petition, or that the petition was approvable at the time it was filed.

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 previous decision of the AAO will be affirmed, and the petition will be denied.

ORDER: The AAO's decision of July 31, 2003 is affirmed. The petition is denied.