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

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: OCT 01 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:

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.

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 congregation of Roman Catholic religious sisters. 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 teacher. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience in the vocation of a religious sister immediately preceding the filing date of the petition.

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--
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> > (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
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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).

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 July 29, 2002. Therefore, the petitioner must establish that the beneficiary was continuously carrying on the vocation of a religious sister throughout the two years immediately prior to that date.

The regulation at 8 C.F.R. § 204.5(m)(2) defines "religious vocation" as 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).

prioress general of the petitioning order, states:

> For the past three years, [the beneficiary] has been pursuing theological and professional studies at in Nashville, Tennessee. She will continue to attend College until she has completed the requirements for a baccalaureate degree and for teacher licensure. When [the beneficiary] has completed her degree, she will be assigned to one of the schools that the congregation staffs.
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> [The petitioner] staffs twenty-three schools in eight states. The schools pay a stipend to the congregation for each of the sisters on the staff. This is the major source of revenue for the congregation. The congregation provides housing, food, clothing, transportation, insurance, medical care and education for each of its members.

The above letter indicates that, while the petitioner intends for the beneficiary to work as a teacher, the beneficiary had not yet taught for the petitioner as of the filing date. There is no indication that the beneficiary worked as a teacher during the qualifying period.

secretary general of the petitioning congregation, states that the beneficiary "is officially a member of the [petitioning congregation], having entered the community as a postulant on August 17, 1999. She received the Dominican habit on August 8, 2000 and . . . made profession of vows on August 10, 2001." Documents in the record indicate that the beneficiary's August 10, 2001 vows were "simple vows for three years," rather than permanent "final vows." Thus, as of the petition's filing date, the beneficiary had not yet made a permanent commitment or fully joined the order. Materials subsequently submitted by the petitioner confirm that "[t]he sister first makes her vows for a period of three years. At the end of this time, she renews them for a period of two years. Thus she is under temporary vows for a minimum of five years . . . but not beyond nine years," after which the sister "is admitted to perpetual profession" and makes "perpetual vows."

The director requested "a detailed description of the beneficiary's prior work experience" during "the two years preceding the filing of this petition." In response, the petitioner has submitted documentation showing that, in April 2003, the petitioner requested tha send a copy of the beneficiary's transcript to the Office of Teacher Licensing of the Tennessee Department of Education. The petitioner has indicated that this transcript request was in conjunction with the beneficiary's application for a Tennessee teaching license. A transcript, also in the record, confirms that the beneficiary completed her studies in 2003.

states "[d]uring the past five years, [the beneficiary] has been a full time student at and has completed the requirements for teacher licensure." She indicates that the teaching position "requires a college degree and a teacher license," neither of which the beneficiary had obtained as of the filing date, let alone two years beforehand.

The director denied the petition because, during the qualifying period, the beneficiary was only under temporary vows, and was a full-time student rather than a teacher. On appeal the petitioner's bursar general, asserts that "[a]ccording to Canon Law, a person is considered a member of the congregation when they profess their temporary vows."

Even if we were to accept that temporary vows are acceptable evidence of commitment to a religious order for immigration purposes (which we do not stipulate here), the beneficiary did not take those temporary vows until August 10, 2001, less than a year before the petition's July 29, 2002 filing date. Thus, the beneficiary was not engaged in a religious vocation throughout the entire 2000-2002 qualifying period.

We note that this particular factor is not a permanent ground for ineligibility, but rather, it is tied to the two-year period immediately preceding this petition's filing date. As such, the denial of this petition is without prejudice to a possible future petition, filed after the beneficiary has accumulated two years of unambiguously qualifying experience.

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.