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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: 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.

Marie Johnson

for 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.

In this decision, the term "prior counsel" shall refer to Myriam Mezadieu of Catholic Charities Legal Services. On appeal, the petitioner asserts that prior counsel performed inadequately in its handling of the proceeding, and the petitioner indicates that future correspondence should come directly to the petitioner. Given this information, and the absence of any indication that prior counsel participated in the preparation or filing of the appeal, we conclude that Ms. Mezadieu no longer represents the petitioner.

The petitioner is a Roman Catholic missionary 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 (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a priest. The director determined that the petitioner had not established (1) that the beneficiary had the requisite two years of continuous work experience as a priest immediately preceding the filing date of the petition; (2) that the beneficiary's position qualifies as the vocation of a minister; or (3) its ability to provide the beneficiary's compensation.

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 12, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a priest throughout the two years immediately prior to that date.

Very Rev. Fr. Sergio Dall'Agnese, provincial superior of the petitioning missionary society, states that the beneficiary has been a priest since 1980, but Fr. Dall'Agnese provides no details about the beneficiary's work during the 1999-2001 qualifying period. In discussing the beneficiary's intended duties, Fr. Dall'Agnese writes of what the beneficiary "would" do for the petitioner; there is no indication in his letter that the beneficiary *already* performs these functions.

The petitioner submits a copy of the beneficiary's resume, indicating that the beneficiary was "Parochial Vicar of Portuguese and Brazilian Catholic Community of Newark, NJ" from July 1999 to October 1999. Other claimed experience as a "parochial vicar," "traveling priest," "professor" and in other positions falls outside the October 1999-October 2001 qualifying period. The most recent position listed on the resume submitted covers, at best, a few weeks of that period. The only reference to anything after 1999 is the assertion that, in 2000, the beneficiary took an intermediate English class at a vocational school in Hudson, Massachusetts. The petitioner's initial submission does not indicate where the petitioner was, or what he was doing, for most of the qualifying period.

The director instructed the petitioner to submit "a detailed description of the beneficiary's prior work experience" during the 1999-2001 qualifying period, as well as copies of any available tax documents such as Forms W-2 and tax returns. In response, Fr. Dall'Agnese offers additional information about the beneficiary's work during the qualifying period:

> In October 1999 [the beneficiary] fulfilled his religious vocation by performing ministerial duties for several Roman Catholic Churches in the Diocese of Worcester, Massachusetts. . . . These duties were primarily performed on weekends with daily ministerial duties performed as dictated by the needs of the parishes. No compensation or stipends were received . . . from the Diocese or parishes. . . .
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> In October, 2000 [the beneficiary] traveled to Brazil. His religious vocation duties were fulfilled within the Diocese of Goiania. . . .
>
> He returned to the United States in July 2001 for the Missionaries of St. Charles Borromeo. He was assigned as an Associate Priest to Our Lady of Aparecida Mission located in Hollywood Florida. This was a full time assignment. . . . Compensation was received from Our Lady of Aparecida Mission.

Fr. Edward J. Moran of St. Anne's Parish, Shrewsbury, Massachusetts, states that the beneficiary "assisted me from October 1999 to September 2000." Fr. Moran does not indicate that this work was full-time. Rather, he states that the beneficiary assisted in "conducting weekday and weekend masses when needed." The letter lists no other duties.

The petitioner submits copies of tax documents, indicating that the beneficiary earned $4,739.57 in 1999. Forms W-2 show that, in 1999, the beneficiary earned wages from several different sources. While one Form W-2 shows that St. James Catholic Church paid the beneficiary a sum under $600 (the exact amounts are not fully legible on the faxed copies), the beneficiary received larger sums from R.G. Shakour and Christmas Tree Shops, Inc. In 2000, the beneficiary earned $6,462 in adjusted gross income, again receiving income from R.G. Shakour and Christmas Tree Shops, Inc., as well as from Spag's. In 2001, the beneficiary reported $4,352 in income, but did not clearly specify its source, although he identified his occupation as "clergy."

The director, in denying the petition, noted the beneficiary's secular work for R.G. Shakour (identified as "a beauty supply distributor"), Christmas Tree Shops, and Spag's ("a general store"). The director determined that this secular employment interrupted the beneficiary's religious work, which therefore was not "continuous" during the two-year qualifying period.

On appeal, in an unsigned statement, the petitioner asserts that the beneficiary undertook "full and continuous employment as a priest from 1980 to the present," but the petitioner also stipulates that the beneficiary "did perform secular work" in 1999. (As noted, tax documents also show secular employment in 2000.) The petitioner acknowledges that the beneficiary "erred in performing secular work with an R-1 visa. The error was unintentional and due to the custom that in Brazil a missionary priest does perform work beyond his priestly duties."

For the purposes of this petition, the salient issue is not that the beneficiary violated his R-1 visa by performing secular work. Rather, what is relevant here is that this work interrupted his religious work. The Board of Immigration Appeals has interpreted the term "continuously" to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948). Here, the record unambiguously confirms that the beneficiary took up other occupations during the qualifying period. Given the petitioner's assertion that outside employment by priests is customary in Brazil, it appears likely that the beneficiary similarly engaged in outside employment during his 2000-2001 sojourn in that country (although the record contains minimal documentation of the beneficiary's work in Brazil).

Furthermore, part-time religious work is not continuous. *See Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980). The available information indicates that the beneficiary's duties were part-time during some of the qualifying period, such as his time in Massachusetts when his "duties were primarily performed on weekends."

For the reasons stated above, we cannot find that the beneficiary *continuously* engaged in qualifying religious work throughout the two-year period immediately prior to the filing of the petition. We note the absence of corroborating documentation of compensation received from the mission in Florida, but the beneficiary's uncontested secular employment is, by itself, sufficient to require the denial of the petition.

The next issue is whether the petitioner seeks to employ the beneficiary in the vocation of a minister. The regulation at 8 C.F.R. § 204.5(m)(2) defines "minister" as 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.

Fr. Dall'Agnese states that the beneficiary's "duties would include conducting Mass, visiting the sick, administering the sacraments, and teaching catechism according to the norms, regulations and the 2000-year tradition of the Roman Catholic Church. In other word, he would assume the duties and responsibilities normally assigned to a parochial vicar." The description of the beneficiary's duties is consistent with the duties of an ordained Catholic priest, including performing sacraments and celebrating mass. The petitioner consistently refers to the beneficiary as an ordained priest.

The director, in denying the petition, observed that the record contains "no certificate of ordination," only after-the-fact assertions that the beneficiary was ordained in 1980. The director's request for information, however, contained no specific request for that document. On appeal, the petitioner submits a copy of an

attestation from Bishop D. Eliseu Simoes Mendes, dated two days after the beneficiary's ordination, verifying that the beneficiary had been ordained as claimed.

The director also found that the beneficiary's resume contains wording that seems to pertain to secular, administrative tasks. For instance, the resume refers to "Strong Interpersonal Skills" and "Excellent Organizational Skills." On appeal, the petitioner asserts that the individuals who helped the beneficiary to prepare the resume "used terms they were familiar with in the stated objectives." Upon review of the record, we find this explanation acceptable. The record firmly establishes that the beneficiary has undertaken, and presumably intends to continue in, clearly religious work. The choice of wording on the beneficiary's resume is not strong evidence that the beneficiary actually seeks employment in a secular, administrative sphere.

We note that documentation submitted on appeal indicates that the terms of the job offer have changed. The initial petition indicated that the beneficiary was to work at a mission in Florida. The appeal, however, contains a copy of an agreement in which the beneficiary "intends to cooperate with the Scalabrini Missionaries at Our Lady of Fatima parish/mission, Silver Spring, Maryland."

8 C.F.R. § 204.5(m)(4) requires the petitioner to explain how the alien will be paid or remunerated. Rev. Dall'Agnese states that the beneficiary "would receive full room and board, health insurance, pension and living expenses." The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

Even if the compensation is to be non-monetary, the petitioner must show that the employer is able to provide such compensation. The initial filing contained no financial documentation. Therefore, the director instructed the petitioner to provide "evidence . . . that the organization has the ability to support" the beneficiary.

In response, prior counsel notes "the Catholic Church has been in existence for about 2000 years." This assertion, however, does not demonstrate that the funds necessary to support the beneficiary come directly from Rome.[1] The regulations requiring evidence of ability to pay do not contain any blanket exemption for Catholic institutions.

The director denied the petition, stating that the petitioner had not adequately established its financial ability to support the beneficiary. On appeal, the petitioner submits an auditor's statement indicating that the petitioner has ample assets to cover the beneficiary's minimal expenses. We find this documentation to be credible and therefore we withdraw the director's finding.

The record, as a whole, resolves the director's concerns about the petitioner's ability to pay and about the nature of the position offered to the beneficiary. The petitioner has not, however, overcome the issue of the

[1] We note the recent, widely-publicized bankruptcy declaration of the Archdiocese of Portland, Oregon, which serves to demonstrate that individual divisions of the Catholic Church are not impervious to financial distress.

disqualifying secular employment which has impermissibly interrupted the beneficiary's religious work. We note that this ground is disqualifying only as it pertains to the two years immediately preceding the filing date, and therefore it would not be an issue in a later petition filed more than two years after the end of the beneficiary's last secular employment. We make this observation not to promise the approval of a hypothetical future petition, but to emphasize that the present decision is without prejudice to such a 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.