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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

PUBLIC COPY

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: OCT 07 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

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.

The petitioner is a Roman Catholic diocese and has submitted evidence that it has the appropriate tax-exempt recognition. It seeks to classify the beneficiary as a special immigrant religious worker in the position of a "Roman Catholic 'Religious'" pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4). The beneficiary is a native and citizen of Haiti.

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. The director also determined that the petitioner failed to establish that the beneficiary's position is a traditional religious function of the Roman Catholic Church or that the beneficiary entered the United States solely for the purpose of carrying on his religious vocation.

The petitioner, through its representative, files a timely appeal. In her brief, the petitioner's representative argues that the beneficiary's "religious background, his past pastoral activities and/or experience prior to joining the Archdiocese of Miami, and since upon his arrival" qualify the beneficiary as a special immigrant religious worker.

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 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).

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) states, in pertinent part, that:

> All three types of 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.

The petition was filed on April 26, 2001. 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.

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).

As we have determined the beneficiary is not eligible for approval based upon the above grounds, we will not discuss the remaining issue of whether the beneficiary entered the United States solely for the purpose of pursuing the vocation of a minister or working for the petitioning church in a professional capacity in a religious vocation or occupation.

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.