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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 04 2005
WAC 03 200 53074

IN RE: Petitioner: [redacted]
Beneficiary: [redacted]

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, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is the United States headquarters of a Christian denomination. 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 that the beneficiary had the requisite two years of membership in the religious denomination and continuous work experience as a priest immediately preceding the filing date of the petition.

On appeal, the petitioner argues that the beneficiary was previously a member of a sister church in Australia, with the same doctrines as the petitioning church.

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," and that they must have been members of the same religious denomination during that same two-year period. 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 June 12, 2003. Therefore, the petitioner must establish that the beneficiary was a member of the Orthodox Catholic denomination, and continuously performing the duties of a priest throughout the two years immediately prior to that date.

8 C.F.R. § 204.5(m)(2) defines "religious denomination" as a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal

or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, religious congregations, or comparable indicia of a bona fide religious denomination.

Metropolitan Archbishop of the petitioning church states, "[s]trictly speaking, the term "denomination" is a Protestant term. Neither Roman Catholicism nor Orthodoxy consider themselves to be denominations. Rather, we are, each in our own ways, a portion of the ancient and continuing Great Church." While we acknowledge the Archbishop's views, the regulatory definition of "religious denomination" is not limited to Protestant Christian sects. There is no indication that the petitioning church answers to the authority of the Roman Catholic pope. There appear to be other substantive doctrinal differences as well.

states "[b]ecause the Orthodox Catholic Church of Australia is a sister church, I would think that we can count it as a portion of [the beneficiary's] 'two-year membership' requirement. Otherwise, I can only state that he has been incardinated (membered) in this jurisdiction since June, 2003 and officially since July 2003."

The director denied the petition, stating that "the beneficiary has been only a member [sic] with this religious organization since June 2003." On appeal, the petitioner asserts that the beneficiary's membership in the Orthodox Catholic Church of Australia should constitute qualifying time in the denomination, and that the beneficiary's relocation to the United States amounts to "a change of Congregation and Parish not denomination." Archbishop Carsten maintains that each Orthodox Catholic church is an autonomous entity but shares a "common heritage, belief and theological pedigree."

The petitioner submits a new copy of a previously submitted certificate, showing that the beneficiary was ordained as a priest in the Orthodox Catholic Church on November 10, 1996. The petitioner also submits background materials that appear to indicate that church officials in the United States and Australia both answer to the Catholikos of the West in Glastonbury, England.

The available materials are consistent with the petitioner's assertions, and we therefore accept the assertion that the beneficiary has been a member of the Orthodox Catholic Church since well before the two-year qualifying period. The director's finding to the contrary is hereby withdrawn.

There remains the question of the beneficiary's continuous experience during the same two-year period. The petitioner offers no specific information regarding the beneficiary's past experience. The beneficiary was outside the United States for most of the 2001-2003 qualifying period, and is not in a position to attest to the beneficiary's work abroad. The Archbishop asserts "I do have documentation substantiating [the beneficiary's] ordination and active role as a priest in our sister Church in Australia." As noted above, the beneficiary was ordained as a priest in 1996. A document from 1996, however, does not serve as evidence of the beneficiary's activities *after* the issuance of that document.

Also, there is no evidence of the beneficiary's work as a priest subsequent to his arrival in the United States. He first entered the United States on January 14, 2003. There is no clear indication that the beneficiary ever acted as a priest for any Orthodox Catholic church since that time. A May 2003 letter addressed to the Bishops' Synod states that the beneficiary "will be visiting me in a month or so while in this area in his sales position," in order to discuss membership and a position within the United States branch of the church. Even if we were to assume that the beneficiary immediately began working as a priest in June 2003, there is nothing to suggest that the beneficiary worked as a priest during the first several months of 2003. As noted earlier, there is no direct evidence of the beneficiary's work as a priest in Australia in 2001 or 2002.

The director, in denying the petition, stated that the petitioner "failed to submit evidence that the beneficiary has the [required] two-year qualifying experience." The petitioner, on appeal, does not address this finding. Given the minimal evidence of record regarding the beneficiary's experience, we concur with the director's finding.

Beyond the evidentiary gap, we note prior case law concerning the term "continuous" religious work. In *Matter of B*, 3 I&N Dec. 162 (CO 1948), it was determined that an alien's religious work was continuous because the alien had taken up no other occupation or employment. 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).

In the present matter, the beneficiary held a "sales position." tates "[a]ll of our canonical clergy are worker priests – they are not paid by the church or its subsidiaries. . . . Our canons forbid any clergyperson from charging/receiving direct payment for sacramental services rendered." The Archbishop also indicates "I would imagine that, as is the case with most of our clergy since they hold secular employment, [the beneficiary's] actual time involved in religious activity as a priest will likely be about ten to fifteen hours weekly."

Because the petitioner has stipulated that *all* of the denomination's clergy are forbidden to draw a salary for church work, and must therefore work in secular jobs, we cannot find that the beneficiary has worked continuously in the vocation of a minister during the qualifying period.

The terms of the beneficiary's church work also have additional implications beyond the decision of the director. Section 101(a)(27)(C)(ii)(I) of the Act, 8 U.S.C. § 1101(1)(27)(C)(ii)(I), requires that the alien seeks to enter the United States *solely* for the purpose of carrying on the vocation of a minister. In keeping with this section of law, 8 C.F.R. § 204.5(m)(4) requires the petitioner to demonstrate that the alien will be solely carrying on the vocation of a minister. Here, the petitioner has plainly stated that the beneficiary will *not* be solely carrying on the vocation of a minister. Rather, the beneficiary has been, and will continue to be, a part-time priest who derives no income or remuneration from his religious work, and must rely entirely on income from secular employment.

Given the above requirements, and the information provided by the petitioner, the job offer is, on its face, non-qualifying. The immigrant classification sought is not available to secular workers who volunteer, part-time, on behalf of religious organizations.

Further, 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).

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.