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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

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MAY 2[illegible] 2005

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date:
SRC 01 156 60086

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: 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 Director, Texas Service Center, initially approved the employment-based immigrant visa petition on July 15, 2002. Upon further review, the director determined that the petition had been approved in error and properly served the petitioner with a Notice of Intent to Revoke, and gave the petitioner the opportunity to submit additional evidence. The director subsequently exercised her discretion to revoke approval of the petition. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal, noting that the petitioner had not submitted a supporting brief or additional documentation as stated on the Form I-290B, Notice of Appeal to the Administrative Appeals Unit. Subsequent to the AAO's decision, however, it was determined that the petitioner had timely submitted a brief. On March 17, 2005, the AAO reopened the matter pursuant to 8 C.F.R. § 103(a)(5)(ii). The petitioner submitted nothing further. The prior decision of the director is affirmed and the appeal is dismissed.

The petitioner is a Roman Catholic archdiocese. 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 religious worker. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition or that the petitioner had extended a qualifying job offer to the beneficiary.

With the brief, the petitioner submitted additional documentation.

Section 205 of the Act, 8 U.S.C. § 1155, states that the Secretary of the Department of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

*Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Id.*

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 first issue on appeal is whether the petitioner established that the beneficiary was continuously engaged in a qualifying religious occupation or vocation for two full years prior to the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

> (ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:
>
> > (A) 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 April 18, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working in the religious work throughout the two-year period immediately preceding that date.

In its letter of March 5, 2001, the petitioner stated:

> [T]he catholic parishioners of South Florida are desperately in need of religious services, including religious instruction, marriage ceremonies, burial services, baptisms, counseling charity, elderly services, and shelter for the homeless, a Religious [worker] such as [the beneficiary] is being requested to accept full-time Religious employment in order to address this unmet need.

> [The beneficiary] has various pastoral experiences, including but not limited to catechetical instruction and religious education programs. [He] has also been a Seminarian with the Grand Seminary Notre-Dame, Port-au-Prince, Haiti. Most recently, [he] has decided to continue to pursue a vocation with the Archdiocese of Miami, St. John Vianney Seminary.
>
> As part of his faith commitment, [the beneficiary] engaged in the coordination or religious education programs for children and adults . . . Through these activities, he instructed young people and adults on Sacred Scriptures, ran meetings for the parents of children attending religious education . . . ministered to the home bound, coordinated the Sunday liturgy and worship . . . distributed Holy Communion, and prepared individuals to become members of the Catholic Church.

The petitioner stated that the beneficiary had "engaged in the coordination of religious education programs" for several years, served as lector at Saint Mary's Cathedral from 1999 to 2000, and worked at St. Joseph Mission in Pompano Beach, Florida (no dates of employment given), and, since 2000 at Corpus Christi Catholic Church, Miami, Florida.

According to the petitioner, the beneficiary's employment "will involve numerous Religious assignments and extensive duties as described in the attached Position Description." The "position description," however, is vague as to the specific duties of the proffered position. Although the petitioner states, "The religious worker supplements the ministries of priest and deacons in parishes as well as the ministries of other lay workers," it also states, "In addition to the vast number of ministerial opportunities for religious workers, it is also the intention of [the petitioner] to provide well-trained ministers."

The latter statement is significant in that in a letter dated June 7, 2000, the petitioner advised the beneficiary that the petitioning organization had accepted him as a candidate for the priesthood, and welcoming him to the archdiocese. Another letter dated June 2, 2000 notified the beneficiary "that the Admissions Committee of St. John Vianney College Seminary has accepted your application and has admitted you to our program.

Therefore, the petitioner's initial submission was unclear as to the nature of the position offered to the beneficiary. The record reflects that at the time the petition was filed, the beneficiary was in training to become a priest.

In response to the director's Notice of Intent to Revoke approval of the visa petition (NOIR), the petitioner submitted a letter dated February 24, 2004 in which it stated:

> [The beneficiary] entered the United States for the purpose of pursuing his religious vocation. [He] has performed religious work for the [petitioner] based on the *pursuit of a religious vocation*. He *continues to pursue his religious vocation* and will continue to perform religious work for the [petitioning organization].

> [The petitioner] gives full support to [the beneficiary] . . . As evidence, see copy of Health Insurance Plan . . ., copy of bill statements from St. Vincent de Paul Regional to the Archdiocese of Miami, Vocations Office for Housing, Cafeteria, Tuition (*continued education in a religious vocation*) . . .
>
> Additionally, [the beneficiary] cannot accept direct compensation for his religious duties or accept employment. However, he receives full room and board, health insurance, pension, *tuition* and living expenses totaling $18,000 per annum . . .
>
> Prior to joining [the petitioning organization, the beneficiary] participated in the "spiritual year program" of the Oblates of Immaculate Mary . . . and in the novitiate. He took vows of poverty, chastity, obedience and perseverance. He took philosophy and theology courses. He performed pastoral ministries . . . *Currently, [he] is pursuing a vocation* with the [petitioner] . . .
>
> [The beneficiary] has continued to perform pastoral ministry, and is *currently performing religious work or pastoral ministry in pursuit of a vocation.* [All emphasis added.]

The petitioner also submitted a new position description, this one for a pastoral worker/St. Joseph Parish. Among the duties included are "chaplain responsibilities." Under "Pastoral Counseling," the position description states: "Other duties and ministries may be assigned depending on the needs of the parish and the progress of incumbent's spiritual formation, to be determined by the Pastor the Archdiocesan Director of Vocations and the incumbent's Director of Formation."

The position qualifications include "[i]ncumbent must be actively pursuing a priestly vocation with the [petitioner], as recommended by Director of Vocations" for the petitioner. Furthermore, the document submitted entitled *Principles of Formation St. John Vianney College Seminary* make it clear that the beneficiary is in training to become a priest, and the evidence indicates that the beneficiary has been in such training under the auspices of the petitioning organization since June 2000. A person in training for a vocation or occupation is not "working" in that vocation or occupation.

The petitioner asserts on appeal that the director's decision "could be construed as an attempt by CIS to interfere with the religious freedom [of] institutions to implement their religious missions by invidiously challenging their decision of when and where to utilize religious professionals." The petitioner further asserts that the wording of the NOIR and the director's decision somehow imply a bias against the Catholic Church.

The petitioner's assertions are without merit. While the determination of an individual's status or duties within a religious organization is not under CIS's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with 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).

Further, the semantics employed by the petitioner is an obvious attempt to circumvent the requirements of the statute and regulation, which requires the beneficiary to have two full years of experience in the religious position for which entrance into the United States for employment is sought.

The evidence establishes that the beneficiary is a seminarian and in training to become a priest, and the work he performs is in preparation for his ultimate ordination in that vocation. Therefore, the evidence does not establish that the beneficiary has been continuously employed in a qualifying religious occupation or vocation for two full years prior to the filing of the visa petition.

The second issue on appeal is whether the petitioner has extended a qualifying job offer to the beneficiary.

The record reflects that the beneficiary is in training to become a priest and that the petitioner assumes the full cost of his care and maintenance during his training. However, the record does not reflect that the petitioner has extended an offer of employment to the beneficiary beyond his training, or that it will provide employment to the beneficiary or be responsible for him should he fail to complete his training or fail to be ultimately ordained as a priest within the Catholic Church.

The record does not establish that the petitioner has extended a qualifying job offer to the beneficiary.

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 decision of the director will be affirmed, and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.