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U.S. Citizenship  
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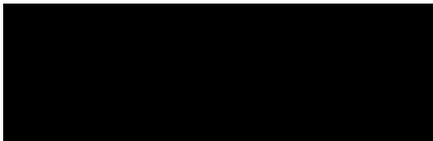
Office: VERMONT SERVICE CENTER

Date: FEB 17 2005

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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:



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*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Roman Catholic community, "which assigns ministers to several dioceses of the Roman Catholic Church in the Eastern part of the United States." 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 been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition or it had the ability to pay the beneficiary a wage.

On appeal, counsel submits a brief, an affidavit from the beneficiary and copies of previously submitted documentation.

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) echoes the above statutory language, and states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States." The regulation 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.”

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 March 8, 2002. In his decision, the director indicated that the petition was filed on March 3, 2002. However, the receipt date stamped on the petition is March 8, 2002. 8 C.F.R. § 103.2(a)(7)(i) states, in pertinent part:

An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and, unless otherwise specified in part 204 or part 245 of this chapter, shall be regarded as filed when so stamped, if it is properly signed and executed and the required fee is attached or a fee waiver is granted.

Therefore, the petitioner must establish that the beneficiary was continuously working as a priest throughout the two-year period immediately preceding March 8, 2002.

The petitioner submitted evidence that the beneficiary was ordained as a priest in the Catholic Church on May 26, 2001, is a member of the petitioner’s congregation, and is currently assigned as priest at the Church of St. Vincent de Paul. The evidence also establishes that immediately prior to his ordination, the beneficiary was a full time student at St. John’s University, matriculating there from September 4, 1996 to May 17, 2001.

According to section 203(b)(4) of the Act and 8 C.F.R. § 204.5(m)(1), the beneficiary must have two years continuous experience in the occupation for which he or she is seeking entry into the United States.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of “a number of safeguards . . . to prevent abuse.” See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged “principally” in such duties. “Principally” was defined as more than 50 percent of the person’s working time. Under prior law a minister of religion was required to demonstrate that he/she had been “continuously” carrying on the vocation of minister for the two years

immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he or she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term "continuously" also is discussed in a 1980 decision where 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).

On appeal, counsel asserts:

The [petitioner] . . . did never [sic] intend to solely base its petition on the fact of [the beneficiary's] ordination to the priesthood, . . . [or] to the diaconate. The [petitioner] merely offered evidence of his ordinations solely to establish the fact that he indeed was qualified . . . to carry on the work of an authorized, duly ordained, minister in the Roman Catholic Church, the work which it endeavored to assign him as a member of the religious community.

Counsel does not explain how the beneficiary could be qualified to work as an "authorized, duly ordained, minister" of the church between May 8, 2000 and May 26, 2001 without having become ordained. Counsel also asserts that, as the beneficiary has spent a considerable period of time in preparing for the priesthood, he has demonstrated a "calling to religious life" as required by the regulation, and thus has demonstrated that he has been engaged continuously in a religious vocation for two years preceding the filing of the visa petition. Counsel further asserts that the beneficiary's pronouncements of "good purposes" when he was admitted to the Novitiate was the equivalent of "taking vows."

Counsel's assertion is without merit. In a letter dated May 24, 2001, Reverend John Timlin, Novice Director with the petitioner, stated:

The Novitiate year is part of the [petitioner's] five year formation-education program which prepares its candidates for priestly ministry . . . It requires that the candidates engage in supervised religious work in parochial and other settings, while also continuing intensive spiritual formation and formal education in line with the pastoral ministry of the [petitioner].

It is therefore obvious that the beneficiary was in training for a subsequent vocation as a priest. A person in training for an occupation or vocation is not working in that occupation or vocation. Further, although the petitioner indicates that, as an ordained deacon, the beneficiary "was able to preach as an official minister of the Roman Catholic Church, to minister the sacrament of Baptism, to officiate at Roman Catholic marriages and preside at the conferral of the Sacrament of Marriage," the petitioner and the Catholic Church clearly recognize the position of deacon as separate and distinct from that of priest, and the beneficiary's ordination to deacon was a step in his ultimate ordination as priest.

The evidence does not establish that the beneficiary was engaged continuously in the same occupation or vocation for two full years prior to the filing of the visa petition.

The director also determined that the petitioner had not established that it has the ability to pay the beneficiary a wage.

The petitioner states that the petitioner "is a Religious Community of Priests and Brothers in the Roman Catholic Church . . . [who] seeks to gather together mature and spiritually dedicated men who vow to live their lives together, full-time, in prayer and active religious ministry, as priests or brothers." The petitioner further stated that the beneficiary is a full member of the petitioning organization, and will receive food, living accommodations, medical expenses and insurance, all living expenses, and a stipend.

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.

In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage.

The petitioner submitted a letter from its treasurer and chief financial officer, who stated that the beneficiary is "comprised of over 200 religious priests and brothers," with net assets exceeding \$200 million dollars.

The evidence sufficiently establishes that the petitioner has the ability to compensate the beneficiary for his services. However, as the petitioner has not established that the beneficiary has been continuously employed as a priest for two full years preceding the filing of the visa petition, the petition may not be approved.

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.