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



U.S. Citizenship
and Immigration
Services

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MAY 03 2011

FILE:

[REDACTED]
EAC 03 082 53941

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner:
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:

[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

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 was organized "to provide humanitarian assistance to the needy and afflicted . . . and to promote the union of the Catholic and Orthodox churches." 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 seminarian formation program coordinator. The director determined that the petitioner had not established that the position qualified as that of a religious worker.

On appeal, counsel submits a brief.

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 alien must be coming to the United States at the request of the religious organization to work as a religious worker. 8 C.F.R. § 204.5(m)(1). To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings.

In its letter of July 31, 2002, the petitioner described the duties of the proffered position as follows:

- establishing, nurturing, maintaining, and coordinating a network of person-to-person relationships currently involving 1,722 persons interested in the religious and spiritual formation of 3,714 young men preparing for ministry as Roman Catholic priests . . .
- maintaining appropriate relations with the religious superiors of each of the seminaries and houses of religious formation participating in [the petitioner's] program for the academic preparation and spiritual formation of candidates for priestly ministry and ascertaining and verifying the qualifications and academic progress of participating seminarians,
- regularly communicating with individual seminarians enrolled in [the petitioner's] Seminarian Formation Program, encouraging their pursuit of the priestly vocation and their maintenance of ties of friendship and solidarity with sponsoring individuals and families,
- regularly communicating with the individuals and families . . . who sponsor and support the priestly formation of individual seminarians . . . ,
- interpreting to sponsoring individuals and families and other interested persons the spiritual nature and religious scope of these programs of philosophical, theological, and spiritual formation of candidates for priestly ministry and challenging them on the level of their personal religious faith to recognize their spiritual solidarity with Catholic churches in other countries and to assist them spiritually and materially.

In his letter accompanying the response to the director's request for evidence (RFE) dated June 2, 2003, counsel summarized the duties of the position:

The work entails review of academic progress of seminarians and verifying qualifications; regular communication with seminarians with a view to providing human support to the pursuit of their vocation, keeping sponsors informed and encouraging them "to recognize their spiritual solidarity with Catholic churches in other countries" by providing them with meaningful information regarding religious formation in its relationship to the [petitioner's] mission.

The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Citizenship and Immigration Services (CIS) therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The duties as described by the petitioner and confirmed by counsel are primarily administrative in nature. In response to the RFE, and again on appeal, counsel asserts:

[The beneficiary's] job is to bring together the welfare and progress of those undergoing religious formation with an understanding of their work by sponsors who are already committed to this program. It is clear that both sides of the job description are related. [The beneficiary] cannot keep sponsors informed unless she is able to account knowledgeably for the progress which individual seminarians are making with respect to their religious formation. Beneficiary's continuing to provide human and spiritual support for priests and other religious personnel, in other words, provides her with the necessary background with which to interpret [the petitioner's] programs to sponsors and to influence sponsors to "recognize their spiritual solidarity with Catholic churches in other countries."

Nonetheless, the evidence does not establish that the position is primarily religious in nature. The petitioner has not shown that monitoring the academic progress of the seminarians or communicating with the seminarians and their supporters is more than an administrative function. Counsel also asserts that the beneficiary "assists virtually in supervising the development of religious personnel with a view to their future leadership roles in the countries [the petitioner] serves." However, no evidence of record establishes that the beneficiary assists in supervising the development of religious personnel, virtually or in reality.

The evidence does not establish that the position is a religious occupation or vocation within the meaning of these proceedings. For this reason, 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.