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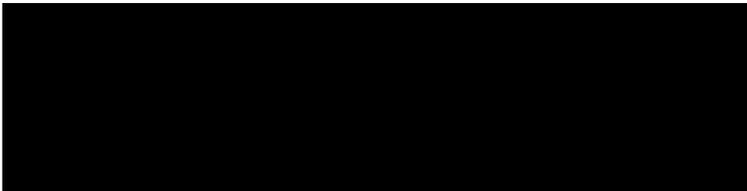


FILE: LIN 06 108 50319 Office: NEBRASKA SERVICE CENTER Date: JUL 27 2007

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:



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.

*Naura Deadna*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be 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 priest at the Church of the Risen Christ, Denver, Colorado. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a priest immediately preceding the filing date of the petition.

On appeal, the petitioner submits a brief from counsel and supporting exhibits.

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 sole issue in contention regards the continuity of the beneficiary's past work. 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." 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 experience in the religious vocation, professional religious work, or other religious work. The petition was filed on March 2, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a priest throughout the two years immediately prior to that date.

In a letter accompanying the initial filing of the petition, Monsignor [REDACTED] Vicar for Clergy of the petitioning archdiocese, stated:

[The beneficiary] was ordained to the Sacred Priesthood on December 4, 2004. Prior to this, he was ordained a Deacon on February 21, 2004. An ordained deacon in the Church is an ordained minister that has authority to perform certain sacraments. As an ordained deacon, [the beneficiary] had authority to perform most, but not all the sacraments in the Church, which were consistent with those of a deacon in the Church. After being ordained a minister, [the beneficiary] was assigned to Risen Christ Church, Denver, Colorado.

With his ordination to the Sacred Priesthood, the Church conferred upon him the further authority to perform all her sacraments: baptism, communion, reconciliation, anointing of the sick and last rites, and marriage. Again, these duties are consistent with those of an ordained priest in the Church.

(Evidentiary citations omitted.) Copies of certificates in the record confirm the dates provided by Msgr. [REDACTED]

On May 16, 2006, the director instructed the petitioner to submit evidence that the beneficiary "has been performing the professional work of a Priest continuously" throughout the March 2004-March 2006 qualifying period. The director stated that, to qualify the beneficiary for the benefit sought, "the prior two-year work experience must be continuous, must have been full-time and must have been paid employment."

In response, the petitioner submitted an unsigned statement that reads, in part:

On February 21, 2004, [the beneficiary] was ordained deacon of the Catholic Church and performed his duties in the Redemptoris Mater Archdiocesan Missionary Seminary of Denver on a full-time, paid basis. . . .

[In] September 2004 [the beneficiary] was assigned as a Deacon to the Risen Christ Church. . . . This assignment was performed in combination with the activities at the Redemptoris Mater.

With his ordination to the Sacred Priesthood, on December 4, 2004 the Church conferred upon him the further authority to perform all her sacraments.

(Evidentiary citations omitted.) Again, certificates in the record confirm the above dates. [REDACTED]

[REDACTED] Rector of Redemptoris Mater Seminary, stated that the beneficiary served as a deacon there "from February 21, 2004 until December 4, 2004," receiving "room and board and a monthly stipend of \$250.00." With regard to evidence of compensation, the petitioner submitted copies of tax documents from 2005, but not from 2004.

The director denied the petition on August 8, 2006, stating:

The record establishes the beneficiary was ordained as a Deacon on February 21, 2004 and later as a Priest on December 4, 2004. The Service finds the beneficiary did not possess the two-years of experience as a Priest immediately preceding the filing of the petition now before the Service. Although the duties of a deacon and a priest may be similar, there are distinct differences that also separate these professions. An ordained priest is conferred the rights of administering the sacraments of the Catholic Church, [whereas] an ordained deacon does not possess these rights. The record does not reflect the beneficiary had been an ordained Priest for the two-year period preceding the filing of this petition. Furthermore, the beneficiary's nonimmigrant status upon the filing date of the petition was that of a student, rather than a religious worker. For this additional reason, the Service finds the beneficiary has had a break in his duty period of a religious vocation and is now considered a student for immigration purposes.

On appeal, counsel argues that an ordained deacon in the Roman Catholic Church qualifies as a "minister" as 8 C.F.R. § 204.5(m)(2) defines the term. Counsel adds that, while a deacon cannot perform every sacrament, the same is true of an ordained priest, who cannot perform certain functions reserved for bishops. This argument is somewhat beside the point because the director made no finding that deacons are not "ministers" under the regulations.

Counsel contends that the director "erred by first requiring the beneficiary to have two years work experience as a priest." Counsel offers no argument to support this conclusion; counsel simply returns to the argument that a Catholic deacon is a minister.

The regulations at 8 C.F.R. § 204.5(m)(1) and (3)(ii)(A), as they stand at the time of this writing, require that the beneficiary must have carried on *the* vocation or occupation, rather than *a* vocation or occupation, indicating that the work performed during the qualifying period should be substantially similar to the intended future religious work. The underlying statute, at section 101(a)(27)(C)(iii), requires that the alien "has been carrying on such . . . work" throughout the qualifying period. An alien who seeks to carry on the vocation of a priest has not been carrying on "such work" while acting as a deacon. For a deacon to perform all the functions of a priest would, in counsel's words, "violate Canon law." The architects of Catholic doctrine took pains to show exactly how a deacon is not the same as a priest. Counsel's argument on appeal requires us to ignore this deliberate distinction.

The petitioner has consistently acknowledged that there are important duties reserved for priests, which deacons cannot perform. The petitioner has also consistently acknowledged that the beneficiary became an ordained priest in December 2004, only about fifteen months before the petition's March 2006 filing date. Counsel, on appeal, seems to argue that, as long as the beneficiary was a "minister" of some kind throughout that two-year period, it is of little consequence whether he was a deacon or a priest at any particular time. We do not share this opinion, for reasons explained above. The petitioner here seeks to employ the beneficiary not simply under the general category of "minister," but specifically as an ordained priest. Deacons and priests carry on related but distinct vocations, with related but distinct functions. It is beyond dispute that the

beneficiary was not continuously carrying on the vocation of an ordained priest throughout the two-year qualifying period.

Counsel, on appeal, cites unpublished AAO decisions from 1994. These decisions have no weight or force as binding precedent. The only precedent cited by counsel is *Matter of Z-*, 5 I&N Dec. 700 (CO 1954), which concerns an alien who was already an ordained priest when the two-year qualifying period began. Counsel has cited this decision not with regard to the beneficiary's duties, but with regard to the director's assertion that the beneficiary's F-1 nonimmigrant status interrupted his vocation as a minister. We concur with counsel that the beneficiary's status as a student did not interrupt his religious work, as the record shows that the beneficiary's studies did not interfere with the ongoing execution of his diaconal functions. Based on the available evidence, the petition fails solely because it was filed before December 4, 2006.

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.