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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

C₁

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 08 2011

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:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) remanded the matter for issuance of a new decision. The Director, California Service Center, again denied the petition and, following the AAO's instructions, certified the decision to the AAO for review. The AAO will affirm the director's decision.

The petitioner is a Roman Catholic religious order. 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 pastoral care minister. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation.

Counsel submits a letter on certification.

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 September 30, 2012, 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 September 30, 2012, 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 issue presented is whether the petitioner has established that the proffered position qualifies as that of a religious occupation.

In a July 21, 2005 letter submitted in support of the petition, the petitioner, through Sister [REDACTED], stated that as a pastoral care minister:

[The beneficiary] will continue to minister among the retired and semi-retired sisters at their convent . . . She will continue to participate in our pastoral care ministry to senior sisters by: 1) preparing the daily Eucharist (the Mass); 2) accompanying the sisters to and participating in the Liturgy of the Mass; 3) bringing Communion to bed-bound sisters and praying with them as needed; 4) welcoming the lay men and women who participate in the convent's Mass; 5) visiting the sister in need on a daily basis to spend dedicated time one on one, and attend to each one's unique needs; 6) praying the Rosary with individual sisters in their rooms as needed; and 7) offering a supportive and spiritual presence and companionship to sisters in their senior years. [The beneficiary] is an important part of our religious institution's wholistic [*sic*] approach to the care of its senior sisters. These activities in which [the beneficiary] engages in are directly related to the traditional religious function of the pastoral care ministry.

In response to an October 11, 2005 request for evidence (RFE), the petitioner stated that the "position was established to address the Church's commitment to minister to the retired and semi-retired sisters in our convents." The petitioner restated the duties of the position as:

1) preparing the daily Eucharist (the Mass) and prayer services; 2) accompanying the sisters to and participating in the Liturgy of the Hours, the official prayer of the Catholic Church, and the Mass; 3) bringing Communion to bed-bound sisters and praying with them; 4) welcoming the lay men and women who participate in the convent's Mass and engaging in the ministry of presence during short social gatherings after Mass; 5) visiting each sister on a daily basis to spend dedicated time with her and attend to her unique needs; 6) praying the Rosary with individual sisters in their rooms or with small groups of sisters; 7) organizing social spiritual television or audiotape programs for the sisters; 8) offering a supportive and spiritual presence and companionship to sisters in their senior years; and 9) attending to the other traditional functions of ministry within the Roman Catholic Church.

In denying the petition, the director determined that the petitioner had not provided evidence of the beneficiary's vows or that the duties of the position required specific training. The director thus determined that the petitioner had failed to establish that the position qualifies as that of a religious occupation.

The AAO remanded the record on July 20, 2007, finding that the record reflected that the beneficiary was no longer a vowed member of the petitioner's religious order and that the decision placed undue emphasis on training for religious occupations. The AAO noted that the record reflects that the beneficiary completed a "Nurses Assistant School" and that this plus the duties of the proffered position "suggest[] that the beneficiary is essentially a nurse's assistant."

The AAO remanded the record for the director to consider other factors, such as recruitment and job advertisements, to determine whether the position qualifies as that of a religious occupation.

On April 16, 2008, pursuant to the AAO's instructions, the director requested additional documentation from the petitioner to establish that the proffered position qualifies as a religious occupation. The director instructed the petitioner to:

Submit documentary evidence establishing that churches or entities within the Roman Catholic denomination routinely employ paid, full-time workers in comparable positions, and that those positions do not embody fundamentally secular tasks, indistinguishable from positions with secular employers.

The director also instructed the petitioner to submit, among other documentation, job advertisements or other materials used to recruit workers, a detailed daily schedule of the duties of the position, and a list of other paid religious workers in the organization. The petitioner stated in a May 24, 2008 letter:

Roman Catholic pastoral care ministers are similar in many respects to health care chaplains. They are routinely employed at health care institutions Professional chaplains, or pastoral care ministers, in a health care setting, clearly embody fundamentally religious and spiritual functions. They provide spiritual counseling and guidance, as well as prayer, worship and the sacraments.

The petitioner provided a copy of a 1997 newsletter from the U.S. Conference of Catholic Bishops (USCCB) Subcommittee on Lay Ministry. While the document references a "pastoral care worker" in one paragraph, the discussion implies that the position refers to a lay chaplain. The document does not provide information on a position similar to the proffered position. The petitioner also provided a copy of a paper, "Professional Chaplaincy Its Role and Importance in Healthcare." The document's "Executive Summary" states, "Spiritual caregivers in healthcare institutions are often known as *chaplains* although they may have different designations in some settings, i.e. *spiritual care providers*." The document does not support the petitioner's statement that the role of "pastoral care ministers," as the duties are described in the petition, is "similar . . . to health care chaplains."

On November 26, 2008, the U.S. Citizenship and Immigration Services (USCIS) promulgated a rule setting forth new regulations for special immigrant religious worker petitions. Supplementary information published with the new rule specified, "All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). As the instant petition was pending on November 26, 2008, it is therefore subject to the new rule.

The new regulation at 8 C.F.R. § 204.5(m)(5) defines "religious occupation" as an occupation that meets all of the following requirements:

(A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.

(B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.

(C) The duties do not include positions that are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible.

(D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

On February 4, 2009, the director notified the petitioner of the new evidentiary requirements and of her intent to deny the petition based on the current evidence of record. The director did not specifically address the requirements of the above-cited regulation. In response to the director's notice of intent to deny (NOID), the petitioner indicated in its attestation at item 3 that it employed a nursing assistant who oversaw the healthcare of 15 sisters. The petitioner outlined the daily schedule of the beneficiary as pastoral care minister:

8:00 AM beginning of day; prepare convent chapel and priest's vestments for the celebration of daily Mass; prepare chapel for a communion service or prepare the room for a Mass broadcast on television if the priest is unable to be present;

8:15 assist four senior sisters in each one's morning activities, as needed; taking time to listen to and pray with each as she begins her day; make order in each one's room;

11:30 accompany sisters to daily Mass, communion service, or a Mass broadcast on television; bring communion to sisters in their bedrooms who are unable to attend Mass; serve as Eucharistic minister when there is a Mass broadcast on television;

Occasionally the Mass is at 9:00 AM and the above morning schedule is adjusted accordingly.

12:00PM spend time with the sisters after Mass, accompanying them to a social gathering with lay men and women who also attend daily Mass in the convent chapel or to their rooms to continue sharing on the Scripture readings of the day;

12:30 join the sisters at their main meal, participating in conversation, sharing news, articles, or books read;

1:30 put away vestments, books, and other items used for the celebration of Mass; make sure that all liturgical items are well cared for and kept in an orderly manner;

spend dedicated time with three senior sisters speaking about God and Sacred Scripture; attend to each one's unique needs and to her need for supportive spiritual presence and companionship.

3:00 End of day

The director again denied the petition, determining that the beneficiary was "essentially a nurse's assistant" and the duties of the position "do not have religious significance and embody the tenets of that particular religious denomination."

In his letter on certification, counsel asserts that the proffered position meets the definition of religious worker as outlined in the regulation and that the petitioner "considers this position an important aspect of the Church's ministry." Counsel also alleges that the petitioner submitted "evidence of this position, including a letters [*sic*] from an authorized official of the Church."

However, the petitioner submitted no documentation that the position as defined by the petitioner is recognized as a religious occupation within the Roman Catholic Church. Further, the documentation submitted by the petitioner is insufficient to establish that the duties of the proffered position primarily relate to a traditional religious function, and that the duties primarily relate to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.

The petitioner has failed to establish that the proffered position qualifies as that of religious occupation as that term is defined in the regulation.

The AAO will affirm the certified denial for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The director's decision of May 15, 2009 is affirmed. The petition is denied.