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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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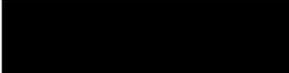


U.S. Citizenship
and Immigration
Services

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FILE:  Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: 
Beneficiary: 

JAN 25 2011

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:

SELF-REPRESENTED

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.

Thank you,

2 Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, the AAO will remand the petition for further action and consideration.

The petitioner seeks classification 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 novice at St. Barbara Monastery, an Orthodox Christian monastery in Santa Paula, California. The director determined that the petitioner had not established that her intended position qualifies as a religious occupation.

On appeal, the petitioner submits statements from herself and the monastery's abbess, as well as background materials.

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 alien beneficiary signed Part 10 of the Form I-360 petition on her own behalf, making her, rather than the monastery, the petitioner in this proceeding. See 8 C.F.R. § 103.2(a)(2). The petitioner filed the petition on February 27, 2009.

The U.S. Citizenship and Immigration Services (USCIS) 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.

[REDACTED], stated that the monastery had offered the petitioner a position as a novice, whose duties would consist of [REDACTED]

On April 22, 2009, the director instructed the petitioner to submit further details about the petitioner’s intended job duties, along with “evidence that the duties primarily relate to a traditional religious function and the position is recognized as a religious occupation within the denomination.”

In response, Abbess Victoria stated:

The special work that [the petitioner] is doing here is highly-skilled craft work, which is traditional in its style, but contemporary in its methods. She is mounting religious icons on rocks and boards and creating elaborate raised details and borders on them, which are then beautifully painted. She is also creating multi-colored, decorated candles for special use (baptisms, weddings, processions). . . . As well as having [the petitioner] produce these items both for our own use and to sell in support of the monastery, we would like her to teach some other members of our community to execute these crafts.

. . . [The petitioner] would have the title of “Sister” as a novice in our community. . . .

A complete description of her work and responsibilities at the monastery includes:

- attendance at services and participation in the liturgical reading and singing (from three and a half to four hours per day)
- approximately four to five hours of craft work per day

- some domestic work (variable hours)
- some “outreach” work in the form of assisting with programs for feeding the homeless (one or two days/week)

. . . It should be added that manual work and particularly manual work in the ecclesiastical arts is traditional for monks and nuns. Such work is considered ideal for the life that monks and nuns pursue, because it leaves the mind relatively free to focus on prayer, while providing a means of producing a marketable product and thus contributing to the financial support of the monastic community.

The director denied the petition on July 28, 2008, stating that the petitioner failed to show that her duties relate to a traditional religious function, have religious significance, or embody the tenets of the petitioner’s religious denomination. The director concluded: “The majority of the duties are secular, *i.e.* administrative work.”

On appeal, the petitioner states: “no matter what our specific duties in the monastery, we are all nuns and give witness to our faith by the way of our lifestyle. . . . My duties an[d] creed of my faith as a sister dictate that I live by the vows of chastity, obedience and poverty.” The petitioner submits background information about Orthodox monasteries, and a new letter in which Abbess Victoria states that “the Christian monastic life in community (or coenobitic life), has been a traditional way of life in the Christian Church since the 4th century.”

The monastic life that the petitioner describes has most of the characteristics of a religious vocation. The USCIS regulation at 8 C.F.R. § 204.5(m)(5) defines a religious vocation as:

a formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia, to a religious way of life. The religious denomination must have a class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion. Examples of individuals practicing religious vocations include nuns, monks, and religious brothers and sisters.

The one missing element here is evidence of a formal lifetime commitment. The abbess has described the petitioner as a “novice,” who essentially lives as a religious sister but who has not yet made a formal lifetime commitment to a religious way of life.

In supplementary information published with 2008 revisions to the regulations, USCIS acknowledged that

some commenters concluded that employees who will practice a religious way of life during their proposed period of stay in the United States, but who do not necessarily make a lifetime commitment to such a life, such as missionaries or novitiates, could not qualify as religious workers. . . .

Missionaries and novitiates who cannot be classified as religious workers coming to the United States to perform a religious vocation because vocations in their denomination do not require a lifetime commitment should nevertheless be able to qualify as religious workers under the “religious occupation” definition.

73 Fed. Reg. 72276, 72281 (November 26, 2008). The above considerations appear to apply in this proceeding. This is not to say that a religious organization can obtain status for secular workers simply by labeling them “novitiates.” In this instance, however, the petitioner’s daily routine, as described, appears to be that of a member of the religious community, rather than, for instance, a secular worker attached to that community for other reasons (for instance, to perform tasks that their vows prevent the religious sisters from performing). The director did not explain how the petitioner’s duties, as described, amount to non-qualifying “administrative work.”

For the reasons discussed above, we will withdraw the director’s finding that the petitioner’s work does not constitute a religious occupation. Because that finding is the sole basis for the denial decision, we will also withdraw that decision. Nevertheless, other issues remain which the petitioner must address.

The AAO may identify additional grounds for denial beyond what the Service Center identified in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

One area of concern relates to the beneficiary’s claimed past experience. The USCIS regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary has been working as a minister or in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously for at least the two-year period immediately preceding the filing of the petition. The USCIS regulation at 8 C.F.R. § 204.5(m)(11) reads:

Evidence relating to the alien’s prior employment. Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work, must have occurred after the age of 14, and if acquired in the United States, must have been authorized under United States immigration law. If the alien was employed in the United States during the two years immediately preceding the filing of the application and:

- (i) Received salaried compensation, the petitioner must submit IRS documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of income tax returns.
- (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.

(iii) Received no salary but provided for his or her own support, and provided support for any dependents, the petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS.

If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

The petitioner indicated that she last entered the United States on November 23, 2008, meaning that she spent some of the two-year qualifying period outside the United States. The petitioner must account for her whereabouts and activities during her time outside the United States. Under the regulation at 8 C.F.R. § 204.5(m)(4), a break in the continuity of the work during the preceding two years will not affect eligibility so long as:

- (i) The alien was still employed as a religious worker;
- (ii) The break did not exceed two years; and
- (iii) The nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

[REDACTED]
Pleasant Prairie, Wisconsin, stated that the petitioner "was a member of our women's monastic community for four years, from December 26, 2003, to January 28, 2008, at which time she was transferred to [REDACTED]." She added that both monasteries belong to "the same order under the [REDACTED]"

[REDACTED] in a letter dated May 29, 2009, stated that the petitioner arrived at [REDACTED] [REDACTED] "in March of 2008" after "visiting her sister in San Francisco for a month, following her departure from Wisconsin and prior to her arrival at our monastery."

The petitioner has offered minimal information about her religious work during the two-year qualifying period. Her visit to San Francisco in February 2008 would not be a disqualifying break in employment, so long as the church still considered her an active member of her religious order. (We do not consider vacations or similar brief interruptions to be disqualifying breaks in the continuity of employment.) Nevertheless, further details and evidence are necessary to establish that the petitioner continuously performed qualifying religious work throughout the two-year qualifying period. We acknowledge that IRS documentation may not be available, but that would not exempt the petitioner from basic evidentiary requirements. The regulation at 8 C.F.R. § 103.2(b)(2)(i) states:

The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

Finally, the regulation at 8 C.F.R. § 204.5(m)(12) reads as follows:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

The record does not show whether the director has conducted, or the intending employer has passed, a compliance review as described in the above regulation.

Therefore, the AAO will remand this matter for a new decision. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.