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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**



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Date: **AUG 23 2012** Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a religious congregation. 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 religious missionary sister/nun. The director determined that the petitioner failed to establish that the beneficiary is qualified for the proffered position.

On appeal, the petitioner submits letters of attestation from [REDACTED]. The petitioner also submits approval notices for four Form I-360 petitions filed by the petitioner on behalf of other beneficiaries along with a copy of each beneficiary's "most recent act of vows." Additionally, the petitioner submits materials related to the petitioning organization's formation process and the beneficiary's schedule, as well as newsletters, articles, photographs, and copies of documents already in the record.

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 United States Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(2) provides that in order to be eligible for classification as a special immigrant religious worker, an alien must:

(2) Be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position in one of the following occupations as they are defined in paragraph (m)(5) of this section:

- (i) Solely in the vocation of a minister of that religious denomination;
- (ii) A religious vocation either in a professional or nonprofessional capacity; or
- (iii) A religious occupation either in a professional or nonprofessional capacity.

The regulation at 8 C.F.R. § 204.5(m)(5) states, in pertinent part:

(5) Definitions. As used in paragraph (m) of this section, the term:

Religious occupation means 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.

Religious vocation means 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.

Religious worker means an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister.

The petitioner filed the Form I-360 petition on June 17, 2011. On the petition, the petitioner indicated that the beneficiary would be employed as a Religious Missionary Sister/Nun, and described her qualifications for the position offered as follows, in pertinent part:

... In October 2005 Miss [REDACTED] came to the United States to enter the convent by participating in our Missionary Religious Sister Training Program at Sacred Heart Novitiate, Browerville, Minnesota, making Religious Profession on April 19, 2009. This training gave Sister [REDACTED] the needed foundation to live and fulfill her religious vocation which she has done in a continuous manner here at Sacred Heart Novitiate for more than two years now. Sister [REDACTED], as a member of our Congregation, has bound herself by three vows of Religion and has thus devoted herself continuously to the service of priests, the aged and elderly, the sick as well as teaching Religion to elementary children in Catholic schools, according to and following the traditions of the Roman Catholic Church.

In a letter accompanying the petition, the petitioner gave the following description of the beneficiary's duties:

As a religious sister, Sister [REDACTED] days are and will be spent in the fulfillment of a semi-contemplative religious life through regular, daily spiritual exercises, while at the same time satisfying the demands of the Apostolic work by teaching catechism, working in parishes to complete the priestly apostolate, providing for the needs of the poor needy and handicapped, assisting the work of spiritual retreats; and making liturgical vestments. Her days are and will be divided between regular spiritual exercises (holy Mass, the divine office, retreats, adoration, private prayer) of at least three hours daily and various duties of the apostolate in the service of God and His church. These works of her religious vocation take up her entire day, seven days a week. ...

The beneficiary seeks to remain in the United States solely in order to continue to fulfill her vocation and carry on her religious occupations. ...

We likewise confirm that Sister [REDACTED] remains a fully qualified religious missionary sister of the Society Saint Pius X and will continue her vocation in the same congregation being bound to it by the vows of poverty, chastity and obedience.

(Emphasis in original.) Accompanying the petition, the petitioner included an excerpt from its Application for Recognition of Exemption Under 501(c)(3) of the Internal Revenue Code. Within the excerpt, the petitioner gave the following description of its formation process:

A baptized young lady makes a written request to be accepted into the Postulancy. At the end of the postulancy, she asks to be received as a Novice. If she is judged fit, she begins her Novitiate, properly so-called, with the reception of the Religious Habit.

The Novice becomes a full-fledged Nun at the completion of her Novitiate formation/training, with the making of the three vows of Religion (Poverty, Chastity, Obedience) in the Religious Order.

The petitioner submitted a copy of the beneficiary's Certificate of Baptism, dated May 1, 1977. The petitioner submitted an "Act of Oblation" certificate dated April 15, 2007, indicating that the beneficiary became a novice on that date. The petitioner also submitted "Act of Annual Vows" certificates which indicate that the beneficiary made "the vows of Poverty, of Chastity and of Obedience in the Congregation of the Sisters of the Society Saint Pius X and in conformity to her Constitutions" on April 19, 2009, and renewed her vows on April 11, 2010 and May 1, 2011. Each of the certificates indicates that the vows were made or renewed "for one year."

On September 13, 2011, USCIS issued a Request for Evidence instructing the petitioner to provide evidence that the beneficiary has made a formal lifetime commitment to a religious way of life and that the religious denomination has a class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion. The notice also stated: "The record does not indicate that the beneficiary has taken her final vows. A person training for a vocation or occupation is not 'working,' for immigration purpose, in that vocation or occupation."

In a letter responding to the notice, the petitioner stated the following:

We will demonstrate, following the *Code of Canon Law* of the Roman Catholic Church and the *Rules and Constitutions of the International Missionary Religious Congregation of the Sisters of the Society Saint Pius X*, that from the moment of the Beneficiary's 1st Profession she became a full-fledged Religious Sister with the express intent of a formal lifetime commitment explicitly contained in the grave commitment of her 1st Vows. Our Religious Congregation is a class of individuals whose lives are dedicated to religious practices and functions, as distinguished from other Catholic laymen, simply because the Vows (of Poverty, Chastity and Obedience) have consecrated its member Religious to God and to His service alone. This is not true for a Catholic laymen who has not taken the Vows of Religion.

The petitioner submitted portions of the *Constitutions of the Sisters of the Society Saint Pius X*, which includes the following relevant excerpts:

Religious Life

The Vows and Virtues of Religion

(17) To attain these spiritual and apostolic ends, the members of the Society, after two years of novitiate, engage themselves in the religious life by pronouncing the three vows of religion.

The simple vows are however public and consecrate the Sisters entirely to God, detach them from the goods of this world and from themselves so that they may be entirely given to prayer and the apostolate. ...

(105) The giving of oneself made by each Sister at her profession contains the following threefold engagement:

- to remain in the Institute for the duration of the vows, **with the intention of staying there definitively.**
- to observe the Constitutions faithfully.
- to work generously to attain the ends of the Congregation. ...

(107) The religious renew their annual profession all together either one year after their last profession day for day, or, in the case of a moveable feast, on the feast day on which they made profession the preceding year, mentioning the feast in their formula of profession.

At the age of 40, with at least 10 years of profession and the authorization of the Superiors, the Sisters may ask to make their perpetual vows, if they so desire.

(Emphasis added.) Although the rules of the congregation do not allow an individual to make her perpetual vows until she is 40 with at least 10 years of annual profession, the petitioner argued in its letter that each profession contains an implicit lifetime commitment because Rule 105 requires the individual to have “the intention of staying there definitively.”

The petitioner submitted a sworn affidavit from Sister [REDACTED] of the petitioning congregation’s parent organization, Sisters of the Society Saint Piux X Motherhouse, Saint Michel en Brenne, France. In the affidavit, Sister [REDACTED] states that “members of the Society, after two years of novitiate training, engage themselves in the religious life by pronouncing the three vows of religion.” She asserts that the beneficiary became “a full-fledged religious Sister” by making her first profession on April 19, 2009, and that the first profession, although not perpetual, includes an “intention of a lifetime commitment.” The petitioner also submitted an affidavit from the beneficiary, in which she asserted that “already by my

temporary vows of Religion, I have committed myself to and engaged myself in a Religious Vocation.”

On November 8, 2011, the director denied the petition. The director found that the evidence showed “that the beneficiary has only made a temporary profession of vows; not perpetual vows.” The director concluded that the petitioner failed to establish that the beneficiary “is qualified in the religious vocation.”

On appeal, the petitioner argues that it is unjust for the director to require the beneficiary to have taken perpetual vows in order to be qualified for the position when the petitioning organization considers her fully qualified. In a letter submitted on appeal, the petitioner states the following:

By the very fact of her Religious Profession, the time her formation terminated and according to the Rules, Constitution and Standards of the Sisters of the Society Saint Pius X, Inc. she became a full-fledged, fully qualified Religious Missionary Sister. The sisters of the Society Saint Pius X make no distinction between Temporary and Perpetual Vows as regarding the fact of being qualified in the religious vocation. A lifetime commitment is implicitly included in the Temporary Vows....

The petitioner submits attestation letters from Rev. Father [REDACTED] the Sacred Heart Novitiate, and Rev. Father [REDACTED] Sacred Heart Novitiate. Both letters assert that the beneficiary completed the formation process by making her vows on April 19, 2009, and that she was considered fully qualified for the proffered position as of that date. The letters also assert that, by making her vows, the beneficiary “made an implicit lifetime commitment as stated in the Rules and Constitutions of the Sisters of the Society Saint Pius X #105.”

The petitioner also makes arguments on appeal that the proffered position could alternately meet the definition of a religious occupation as the duties of the religious sisters relate to a traditional religious function and are recognized as a religious occupation within the denomination.

Finally, the petitioner offers copies of approval notices for four other Form I-360 petitions filed by the petitioner on behalf of “religious sisters under temporary vows.”

With regard to the previously approved petitions, the AAO notes that it is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm’r 1988). Nevertheless, the AAO agrees with the petitioner that it has demonstrated the beneficiary’s qualifications for the proffered qualifying position.

The petitioner submitted documentary evidence to establish the requirements for the proffered position of religious sister according to its organization and denomination. The petitioner also submitted evidence that the beneficiary has met those requirements and is considered qualified for the vocation within the denomination. The AAO finds that the petitioner has established that,

although the beneficiary's vows are renewed annually, they are recognized within the rules of the congregation and denomination as evidencing a lifetime commitment and therefore rendering the beneficiary a member of a class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion.

Further, the AAO finds that the petitioner has submitted sufficient evidence to establish that the proffered position alternately meets the definition of a religious occupation under 8 C.F.R. § 204.5(m)(5), and that the beneficiary is qualified for that occupation according to the denomination's standards.

Therefore, the AAO finds that the petitioner has established that the beneficiary is qualified for the proffered position and eligible for classification as a special immigrant religious worker.

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 met that burden. Accordingly, the AAO will withdraw the director's denial decision and approve the petition.

ORDER: The appeal is sustained and the petition is approved.