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

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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U.S. Citizenship and Immigration Services

[redacted]

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Date: JUL 25 2012 Office: CALIFORNIA SERVICE CENTER FILE: [redacted] WAC

IN RE: Petitioner: 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 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 AAO will dismiss the appeal.

The petitioner is a church. 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 assistant. The director determined that the petitioner failed to establish that the beneficiary is qualified for the proffered position.

On appeal, the petitioner submits a brief from counsel, two signed attestations from Superior Ana Pham Thi Hue, Formation Director of Lovers of the Holy Cross in Ho Chi Minh City, Vietnam, and a "Final Vow" certificate signed by Ana Pham Thi Hue and the beneficiary.

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:

Minister means an individual who:

(A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct such religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;

(B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;

(C) Performs activities with a rational relationship to the religious calling of the minister; and

(D) Works solely as a minister in the United States, which may include administrative duties incidental to the duties of a minister. ...

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 15, 2011. In Part 2 of the petition, "Classification Requested," the petitioner indicated that the beneficiary will "be working as a minister." In the Employer Attestation portion of the petition, the petitioner listed the title of the position offered as "Pastoral Assistant" and stated that, as compensation, the beneficiary will be provided with room and board, transportation and medical expenses. The petitioner described the beneficiary's "qualifications for the position offered" as follows: "The alien was ordained on May 07, 2005 in Ho Chi Minh City, Vietnam. She completed a three-year theology program."

Accompanying the petition, the petitioner submitted a copy of a document entitled "Certificate of Religious Identity" from the "Office of the Archbishop, Hochiminh City," which stated in part:

> The Archbishop's office certifies that:
>
> is a religious of the Congregation of the Lovers of the Holy Cross of Go Vap.
>
> *Hochiminh City May 2, 2008*

The petitioner also submitted a certificate dated May 10, 2008, verifying that "Sister completed a three-year theology program at Paul Nguyen Van Binh Theological Course Institute of Inter-Congregation of Lovers of Holy Cross in Hochiminh City.

The petitioner submitted an untitled document, dated July 2008, providing a description of the beneficiary's position of "Pastoral Assistant for Faith Formation – Children Sacraments (Penance & Eucharist)" at "Archdiocese of Seattle Vietnamese Community." An undated letter of recommendation from the Vietnamese Catholic Community in Seattle, Washington, to the signatory of the instant petition, also described the work of the beneficiary "in the Pastoral Ministry" at "Holy Family Parish in Auburn."

On September 8, 2011, USCIS issued a Request for Evidence, in part requesting additional information about the proffered position and the beneficiary's qualifications. In the notice, USCIS stated that "it is unclear whether the beneficiary will be working in a vocational capacity or a ministerial capacity." The notice instructed the petitioner to provide evidence that the position is recognized as a religious occupation within the denomination and that the duties primarily relate to a traditional religious function. The petitioner was alternately instructed to submit evidence that the beneficiary qualifies as a minister according to the denominations requirements, including any relevant evidence of ordination.

In its letter of response to the notice, the petitioner asserted that the beneficiary would receive room and board, medical expenses and transportation expenses but no salary, and made the following statements about the beneficiary's duties and qualifications:

> Enclosed please find the beneficiary Work Schedule which, including among other duties, praying meditate adoration and worship God, assisting the development of Faith Formation Program, teaching First Holy Communion including Eucharistic and Reconciliation Sacraments and assisting ministry with Mass and Adoration for the Vietnamese community. ...
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> The beneficiary was a Pastoral Assistant for Faith Formation-Children Sacraments at the Archdiocese of Seattle Vietnamese Community. Please find enclosed a copy of the document dated July 2008 issued by Reverent [redacted], the beneficiary's Supervisor at Archdiocese of Seattle Vietnamese Community.
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> We are also enclosing documents relating to the beneficiary's qualification which include copies of the Certificate of Religious Identity, Attestation by The Lovers of The Holy Cross Go Vap and Transcript of Record for the Three-year Program of Theology by the Saint Paul Nguyen Van Binh Theological Institute.

The petitioner did not state whether the beneficiary would be working in a ministerial capacity or a vocational capacity. The petitioner resubmitted copies of the beneficiary's religious identity certificate and theology course certificate, and also submitted a copy of her transcript from the theology program. In an attestation dated May 28, 2008, the Superior General of The Congregation of Lovers of the Holy Cross (LHC) Go Vap discussed the beneficiary's assignment to the position of pastoral assistant at the Vietnamese Catholic Community in Seattle and provided the following timeline regarding the beneficiary membership in LHC:

> Entered the Convent:
>
> 1. July 12th, 1999 – June 22st [sic], 2001 : Aspirant
> 2. June 22st [sic], 2001 – June 21, 2003 : Postulant
> 3. June 21st, 2003 – May 7, 2005 : Novice
> 4. May 7, 2005 : First Profession
>
> Until now : Juniorate

The petitioner submitted a document entitled "Formation Program of the Lovers of the Holy Cross," describing the stages of formation for becoming a nun, including "Aspirant," "Pre-Novitiate," "Novitiate," and "Profession." The final stage was described as follows:

> **Profession: 5 – 9 years.** After Novitiate program, candidates will profess their vows. When candidates took vow they become a nun. The profession is the beginning of the Sister's permanent commitment to God by the evangelical counsels in the Lovers of The Holy Cross

> Congregation. However, they need to repeat 9 years to remind they really belong to God and Congregation.

On November 8, 2011, the director denied the petition based on the petitioner's failure to establish that the beneficiary is qualified for the proffered position. In the decision, the director stated that the petitioner "has attested that requirements for the vocation are the following," and quoted the descriptions of the formation stages from the "Formation Program of the Lovers of the Holy Cross" document. The director determined that the petitioner had not submitted any "record of the beneficiary taking her final or perpetual vows," and therefore had not shown that she qualified as a member of a religious vocation.

On appeal, the petitioner submits two signed attestations from Superior [redacted] the Formation Director of LHC in Vietnam, both of which assert that the beneficiary professed her "Final Vow" on August 6, 2010. The petitioner also submits a statement entitled "Certifice [sic] Final Vow," dated August 6, 2010, professing the beneficiary's commitment to "live in chastity, poverty and obedience for the rest of my life according to the constitution and statues [sic] of the congregation of the Lovers of the Holy Cross." The statement is signed by the beneficiary and Superior [redacted] The AAO notes that the "Formation Program" document submitted by the petitioner stated that a candidate needs to repeat her profession for 9 years in order to complete the formation process within the LHC congregation. However, according to the attestation from the Superior General of The Congregation of Lovers of the Holy Cross Go Vap, dated May 28, 2008, and an attestation from the Formation Director of LHC submitted on appeal, the beneficiary made her first profession on May 7, 2005, only five years before she purportedly took her final vow. The second attestation from the Formation Director of LHC submitted on appeal states that the beneficiary took her "First Vow" on May 7, 2007. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

To the extent the director found that the petitioner has established what the qualifications are for the proffered position, the AAO disagrees. At the time of filing the petition, the petitioner indicated that the pastoral assistant position was a ministerial position and asserted that the beneficiary was "ordained on May 07, 2005." The Request for Evidence instructed the petitioner to clarify whether the proffered position was in fact ministerial or vocational in nature and to submit corresponding evidence of her qualifications according to the denominations standards. The petitioner's response did not clarify the nature of the position offered or provide evidence regarding the denomination's standards for the position of pastoral assistant. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Although the evidence submitted in response to the notice established that the beneficiary had begun the formation process for becoming a nun according to the standards of the LHC congregation in Vietnam, the petitioner never indicated that completion of the formation process is required for the pastoral assistant position, or that the position is considered a religious vocation.

The petitioner submits evidence on appeal regarding the beneficiary's purported completion of the formation process according to the standards of the LHC congregation. Although counsel states that this evidence shows that the beneficiary "is qualified for religious vocation," the petitioner has not asserted or established that the proffered position requires a formal lifetime commitment to a religious way of life and thus qualifies as a religious vocation under 8 C.F.R. § 204.5(m)(5).

Because the petitioner has not provided sufficient explanation or evidence regarding the nature of and qualifications for the position of pastoral assistant, the AAO agrees with the director's conclusion that the petitioner has not established that the beneficiary is qualified for the proffered position.

As an additional matter, the AAO finds that the petitioner has not established that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial 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 Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The USCIS regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the alien 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. Therefore, petitioner alien must establish that the beneficiary was continuously performing qualifying religious work in lawful status throughout the two-year period immediately preceding June 15, 2011.

The USCIS regulation at 8 C.F.R. § 204.5(m)(11) provides:

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

According to the Form I-360 petition, the beneficiary arrived in the United States on July 2, 2008. Accompanying the petition, the petitioner submitted a copy of a Form I-797A, Notice of Action, which indicated that the beneficiary was granted R-1 nonimmigrant status authorizing her work for the petitioner with validity dates of April 14, 2011 to July 2, 2011. The petitioner submitted a position description for the beneficiary from the Archdiocese of Seattle Vietnamese Community, dated July 2008, as well as an undated letter describing her work for that organization. Although these documents suggest that the beneficiary may have worked for the Archdiocese of Seattle Vietnamese Community during a portion of the two-year qualifying period immediately preceding the filing of the petition, the petitioner did not submit evidence regarding the beneficiary's immigration status or work authorization in the United States prior to April 14, 2011. Further, the evidence did not set forth the beneficiary's dates of employment for the petitioner or any other employer to establish the continuity of her employment, nor did the petitioner submit evidence of any salaried or non-salaried compensation received by the beneficiary during the qualifying period as required under 8 C.F.R. § 204.5(m)(11).

The Request for Evidence, issued on September 8, 2011, instructed the petitioner to submit additional evidence regarding the beneficiary's work history during the two-year qualifying period including evidence of compensation, evidence of lawful status and work authorization, and an explanation for any break in the continuity of the work. However, in response, the petitioner again failed to provide dates of the beneficiary's employment to establish continuity, and to provide evidence regarding the beneficiary's immigration status or compensation. Therefore, the AAO finds that the petitioner has not established that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition.

The petition will be denied 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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.