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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

[REDACTED]

C1

DATE: JUN 15 2012 OFFICE: CALIFORNIA SERVICE CENTER [REDACTED]

IN RE: [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 with the field office or service center that originally decided your case by filing a 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 and certified the decision to the Administrative Appeals Office (AAO) for review. The AAO will affirm the director's decision.

The petitioner is a "missionary Order of religious nuns for the Roman Catholic 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 eucharistic minister and religious worker. The director determined that the petitioner had not established that the beneficiary had the required two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.4(a)(2) indicates that the petitioner may submit a brief within 30 days after the director serves notice of a certified decision. The director issued the certified denial on March 27, 2012. The permitted time period has elapsed, and the AAO has received no response to the certified denial. The AAO therefore considers the record to be complete as it now stands.

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 U.S. Citizenship and Immigration Services (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 filed the Form I-360 petition on October 17, 2011. In an accompanying letter, [REDACTED] regional superior of the petitioner's USA/Canada Region, stated that the beneficiary took "her final vows on June 17, 2000." During her time with the order, the beneficiary "has worked in our orphanages, has taken care of the elderly ones, done pastoral work in parishes, [and] taught in schools."

[REDACTED] pastor of [REDACTED], Kentwood, Michigan, stated:

[The beneficiary] has been working at St. Mary Magdalen Catholic Church since February 2011 till date. As a Pastoral Assistant she has been engaged in the Parish Ministry under my direction and supervision as the Pastor in-charge of the Parish. . . .

[The beneficiary] is receiving monthly stipends and her housing, feeding, Health Insurance and other needs are being provided for by the Parish.

Sr. Immaculate Obioma Osueke, local superior of the petitioner's convent in Oak Park, Michigan, stated:

[The beneficiary] worked under my supervision . . . for the period covering SEPTEMBER 12, 2009 to JANUARY 31, 2011. During this period, [the beneficiary] performed her primary religious duty of prayer. She also distributed Holy Communion as a Eucharistic Minister, and regularly visited the Blessed Sacrament and prayed for the sick and needy. Furthermore, [the petitioner] provided spiritual pastoral care services at the convent. . . . In addition to her primary duties, she also worked for and on behalf of the congregation and . . . car[ed] for the young in our Daycare and other facilities. During this period, [the beneficiary] received [a] monthly stipend of \$400.00 while her housing, feeding[,] medical and other needs were adequately taken care of. She has continued to work as authorized by the Superiors of the Order.

The petitioner submitted documentation showing that USCIS granted the beneficiary R-1 nonimmigrant religious worker status from July 1, 2011 to December 31, 2013. The petitioner did not document the beneficiary's nonimmigrant status before July 1, 2011. The petitioner also submitted a copy of a certificate from the Diocese of Steubenville, Ohio, naming the beneficiary "Extraordinary Minister of Holy Communion in The Diocese of Steubenville." The certificate indicated that the beneficiary was at the Franciscan University of Steubenville. The date on the certificate is January 26, 2010.

The director issued a notice of intent to deny (NOID) on February 1, 2012, stating:

[T]he petitioner must establish that the beneficiary has been working continuously since at least October 4, 2009 in the United States in a lawful immigration status, or outside the United States. . . .

The . . . beneficiary was in a valid F-1 (student) status from August 13, 2009 to June 30, 2011. The beneficiary began authorized OPT on January 17, 2011 until she changed her nonimmigrant status on July 1, 2011 to that of an R-1 (Religious Worker). It should be noted that employment is not authorized while an alien is in a student (F-1) status except while participating in an authorized Optional Practical Training (OPT).

The director found that the beneficiary's work at St. Mary Magdalen Church, beginning February 2011, "was authorized under OPT," but the same could not be said of the beneficiary's earlier claimed work in Oak Park. Therefore, the petitioner had not established that the beneficiary worked in lawful immigration status, with employment authorization, throughout the 2009-2011 qualifying

period. The director also noted that the beneficiary's claimed compensation of \$400 a month plus food, housing and other considerations did not appear to be consistent with full-time employment.

In response to the NOID, [REDACTED] stated:

Between [the beneficiary's] initial admission in F-1 status on August 13, 2009, and present, the [petitioning order] has authorized [the beneficiary] to carry out her vocation in Ohio, Michigan and Pennsylvania. . . .

Pursuant [to] her religious vocation, she was assigned to train and enhance the performance of the duties of her religious vocation in the Catholic University of Steubenville, Ohio, thereby obtaining an F-1 student visa. . . . Without any break in her religious duties from August 2009, in February 2011, [the beneficiary] was re-assigned by the [petitioner] to St. Mary Magdalene Catholic Church Kentwood, to complete her Optional Practical Training. . . .

The NOID mentioned that [the beneficiary] received salaried compensation that is unauthorized from [REDACTED]. [The beneficiary] was never an employee of [REDACTED]. . . . The work and payment mentioned in the letter written by Sr. Osueke did not mean the same as USCIS understood it. . . .

[The beneficiary], like our other Sisters, does not receive a salary from [the petitioner]. She receives a monthly stipend as well as other benefits that include housing, feeding, medical, etc., like every other member of the Order. . . .

We have fully supported [the beneficiary] financially since she professed her temporary vows in 1993, and we will continue to provide for her as long as she remains a member of our Order. . . . She did not take an unauthorized job during the period she was on F1 visa and did not receive any salary.

The observation that the beneficiary works in a religious vocation is sufficient to explain why the beneficiary earns only \$400 per month. The 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 petitioning order claims to have met the beneficiary's basic material expenses in place of a salary. Furthermore, provision of housing for the beneficiary would appear to be more consistent

with full-time than part-time work. The AAO will therefore withdraw the director's finding that the beneficiary's low compensation implies part-time employment.

That same provision of material support, however, compounds the director's key finding. [REDACTED] asserted that the beneficiary received a stipend, not a salary. The Board of Immigration Appeals ruled that an alien who "receives compensation in return for his efforts on behalf of the Church" is "employed" for immigration purposes, even if that compensation takes the form of material support rather than a cash wage. *See Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982). The petitioner repeatedly asserted that the beneficiary performed functions for her order, in exchange for room, board, and a stipend. This arrangement clearly amounts to employment under *Hall*, whether or not the petitioner chooses to call it by another term.

The regulation at 8 C.F.R. § 204.5(m)(11) specifies that the beneficiary's employment in the United States "must have been authorized under United States immigration law." [REDACTED] asserted that the beneficiary always worked with the petitioning order's authorization, but the petitioner is not a government agency with the authority to authorize employment under United States immigration law.

The USCIS regulation at 8 C.F.R. § 214.2(f)(9) limits the circumstances under which an F-1 nonimmigrant student may accept employment. The petitioner has not shown, or even claimed, that the beneficiary worked within these limitations, and belonging to a religious order does not presumptively exempt the beneficiary from the regulatory requirements for maintaining F-1 nonimmigrant status.

The director denied the petition on March 27, 2012, stating that the beneficiary was not authorized to engage in compensated employment while in F-1 nonimmigrant status. The director also noted the "conflicting statements" regarding the beneficiary's location in early 2010, placing the beneficiary simultaneously in southeastern Michigan and eastern Ohio, on opposite sides of Lake Erie. The director concluded that "the beneficiary could not have maintained a full-time student status at the Franciscan University of Steubenville while being employed full-time as a religious worker in Oak Park, Michigan approximately 280 miles from the university."

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92.

As noted above, the permitted response period for the certified decision has elapsed, and the AAO has not received a timely response from the petitioner. Apart from the director's failure to consider the beneficiary's work a religious vocation rather than a religious occupation, the AAO will affirm the director's uncontested decision. The petitioner has not shown that the beneficiary had USCIS

authorization to work in a religious vocation while she was in F-1 nonimmigrant status, and the overlapping claims that she lived and worked in Michigan while studying in Ohio raise overall questions of credibility.

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 (9<sup>th</sup> 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). Review of the record shows another area in which the petitioner has failed to meet its burden of proof.

The USCIS regulation at 8 C.F.R. § 204.5(m)(10) reads:

*Evidence relating to compensation.* Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS [Internal Revenue Service] documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

██████████ stated that the beneficiary “will receive a full maintenance and care from the Order. This will include room and board and a stipend of \$450 monthly and medical insurance as well as other benefits.” The petitioner did not submit IRS documentation or an explanation for its absence. Furthermore, the petitioner submitted no verifiable documentation that room and board will be provided (including but not limited to evidence that the petitioner owns the house at ██████████, where it claims the beneficiary will live).

On the employer attestation that accompanied the Form I-360 petition, the petitioning order claimed 1,250 members, each of whom presumably lives under arrangements similar to those described above. If 1,250 members each receive a \$400 monthly stipend, the stipends alone would add up to \$500,000 per month, before taking into account any other expenses incurred by the order (such as food, lodging, utilities, etc.). The petitioner submitted bank statements from a checking account labeled “Regional Account.” ██████████ letterhead refers to the “USA/Canada Region,” which implies that the “regional” checking account covers the entire “USA/Canada Region.” Those bank statements show withdrawals totaling \$105,367.63 (excluding bank fees) in the month of June 2011 and \$104,141.00 in July 2011. These totals are well below the levels that would seem necessary to support 1,250 members of a religious order, even if the account existed only to pay such stipends (which it does not; only a very few transactions are in the amount of \$400).

Based on the facts discussed above, the AAO concludes that the petitioner has not submitted sufficient credible evidence relating to the beneficiary's intended compensation. This, by itself, is grounds for denial of the petition.

The AAO will affirm the denial of the petition 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 met that burden.

**ORDER:** The director's decision of March 27, 2012 is affirmed. The petition is denied.