

Identifying data deleted to  
prevent disclosure of unclassified  
information of personal privacy

PUBLIC COPY

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

Date: JUN 21 2012

Office: CALIFORNIA SERVICE CENTER



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:



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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

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 nun. The director determined that the petitioner failed to establish that the beneficiary qualifies as a member of a religious vocation.

On appeal, the petitioner submits a brief from counsel, a copy of the beneficiary's Curriculum Vitae, a letter dated September 1, 2003 from [REDACTED] copies of documents already in the record, and copies of United States Citizenship and Immigration Services (USCIS) communications regarding religious worker visa classifications.

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 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 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 October 1, 2010. In the Employer Attestation portion of the petition, the petitioner described the beneficiary's qualifications as follows:

██████████ has been a member of the Roman Catholic Faith since her baptism of September 6, 1963, which is more than two years of membership required by U.S. law and regulation. Sr. ██████████ first entered the ██████████ Help and made her final vows in 2001. After prayer and discernment, ██████████ requested to be admitted to our religious institute. Her request was granted. Since that time, ██████████ has been a member of our congregation continuing to serve as a Roman Catholic Nun, which is in compliance with her R-1 visa.

This description was also included in a letter from the petitioner which accompanied the petition. The petitioner also submitted a document entitled "Admission to Candidacy," dated August 13, 2006, stating that the beneficiary "formally requested and was admitted to the congregation of the ██████████

On May 24, 2011, USCIS issued a Request for Evidence which instructed the petitioner to provide evidence that the beneficiary has made a formal lifetime commitment to a religious way of life and to provide evidence “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.”

In response to this notice, the petitioner submitted a document entitled “Certificate of Vows,” dated June 9, 2011 and signed by an official of the petitioning organization, which again asserted that the beneficiary “first entered the [REDACTED] and made her final vows in 2001.” The document also stated that the beneficiary “is a member in good standing of our [REDACTED].” Additionally, the petitioner submitted an undated, handwritten document, signed by the beneficiary, which stated:

In the name of the most Blessed Trinity, in the Presence of the our Lord Jesus Christ, of the Immaculate Virgin Mary, [REDACTED], and of all the court of heaven, with the authorization of the Provincial Superior and the Province Leadership Team and before you, [REDACTED] make to Almighty God, the vows of chastity, poverty and obedience **for three years** according to the Constitutions of the [REDACTED]

(Emphasis added.) The petitioner also submitted copies of excerpts from the Code of Canon Law related to “Consecrated Life” (religious vocations) within the Roman Catholic Church.

The director denied the petition on July 14, 2011. The director noted that, although the petitioner asserted that the beneficiary took her final vows in 2001, it did not submit documentary evidence to support the assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). The director found that the evidence did not establish that the beneficiary had made a formal lifetime commitment to a religious way of life, and she therefore determined that the petitioner had not established that the beneficiary qualified as a member of a religious vocation.

Counsel for the petitioner argues that “the Officer mistakenly attempted to make a determination of the Beneficiary’s status as a Roman Catholic Nun rather than determining if she qualifies to receive benefits under the immigration laws of the United States.” In support of this argument, counsel refers to an unpublished decision issued by the AAO. While 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a).

The AAO is not persuaded by counsel's argument. The petitioner seeks immigration benefits for the beneficiary based on her prospective position as a member of a religious vocation. Therefore, it is appropriate for USCIS to consider whether the petitioner has established that the beneficiary is a member of such a vocation. While the AAO agrees with counsel's statement on appeal that "[t]he authority to determine if one is a Roman Catholic Nun lies with the organization, the Roman Catholic Church," the petitioner must establish through documentary evidence that the beneficiary meets the definitions of "religious worker" and "religious vocation" found in the regulation at 8 C.F.R. § 204.5(m)(5).

On appeal, the petitioner submits a Curriculum Vitae (C.V.) for the beneficiary, which indicates that the beneficiary professed "Final Vows" [REDACTED] South Korea, on February 17, 2000, and was dismissed from OLPH on October 8, 2001. The C.V. also states that the beneficiary was a postulant at the petitioning organization from August 13, 2006 to February 15, 2008, and a novitiate from February 16, 2008 to February 13, 2010. The final entry on the C.V. states that she made "First Vows" at the petitioning organization on February 14, 2010. The petitioner also submits a letter from OLPH, dated September 1, 2003, which states in part that the beneficiary "made her perpetual vows on Feb. 17th 2000 and received a master's degree in July 2001." The AAO notes that the dates listed on the C.V. and the letter from OLPH are not consistent with previous statements by the petitioner that the beneficiary "made her final vows in 2001." Further, in the letter accompanying the petition, the petitioner stated that the beneficiary "has continued to serve our order as a Roman Catholic Nun" since her entry into the United States on December 31, 2006. However, according to the C.V. submitted on appeal, the beneficiary has served as a postulant and a novitiate for the petitioner since entering the United States and has not yet made her final vows. 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). Counsel argues in his brief that the letter from OLPH provides "probative evidence that the Beneficiary professed her final vows over a decade ago." However, if the beneficiary truly qualifies for her work with the petitioner in the vocation of nun according to the denomination's standards based on her final vows with OLPH, the petitioner has not provided an explanation as to why she entered the petitioning organization as a postulant and subsequently served as a novitiate, taking her first vows with the petitioner on February 14, 2010. The AAO therefore agrees with the director's finding that the petitioner has not established that the beneficiary qualifies as a member of a religious vocation.

In his brief, counsel also argues that the director "incorrectly applied the law in 8 C.F.R. §204.5(m)(4) by not recognizing that prior religious work does not need to be in the same position as the job offered." The AAO agrees that the regulations do not require an alien's qualifying religious work to have been in the same capacity as the prospective position. However, the director did not deny the petition based on a difference between the beneficiary's prior experience and her prospective position. Rather, the director appropriately determined that the petitioner had not established that the beneficiary had taken the formal lifetime vows necessary to qualify as a worker in a religious vocation for the petitioning organization as of the date of filing the petition. The

petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978).

On appeal, counsel additionally argues as follows:

If the Officer found that specific information was missing or incomprehensible in regards to Beneficiary's final vows, then the Officer was required to issue a Request for Evidence. The officer must provide adequate notice to missing evidence and afford an opportunity to the Petitioner and Beneficiary to properly respond.

The Officer wrongly denied the petition where he afforded no opportunity to the Petitioner to properly respond to an issue first raised in the denial.

The regulation at 8 C.F.R. § 103.2(b)(8) provides in pertinent part:

(ii) Initial evidence. If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS in its discretion may deny the application or petition for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.

(iii) Other evidence. If all required initial evidence has been submitted but the evidence submitted does not establish eligibility, USCIS may: deny the application or petition for ineligibility; request more information or evidence from the applicant or petitioner, to be submitted within a specified period of time as determined by USCIS; or notify the applicant or petitioner of its intent to deny the application or petition and the basis for the proposed denial, and require that the applicant or petitioner submit a response within a specified period of time as determined by USCIS.

The AAO finds that in denying the petition, the director complied with 8 C.F.R. §§ 103.2(b)(8)(ii) and (iii), which provide for discretionary authority to request additional evidence, provide notice of the director's intent to deny the application or petition, or deny the petition or application. Further, the AAO notes that in this case, the director issued a Request for Evidence on May 24, 2011, specifically instructing the petitioner to submit additional evidence regarding the issue in question. The director subsequently denied the petition because the submitted evidence failed to establish eligibility for the benefit. For these reasons, the AAO is not persuaded by counsel's argument that the director erred in her decision regarding this matter.

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 October 1, 2010.

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:

- (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.

According to evidence accompanying the Form I-360 petition, has held R-1 nonimmigrant status which authorized her to work for [REDACTED] since entering the United States on December 31, 2006. She subsequently re-entered the United States in the same status on November 26, 2008 and again on January 5, 2010. In the letter accompanying the petition, the petitioner stated that “[s]ince her entry into the U.S. on December

31, 2006, [REDACTED] has continued to serve our order as a Roman Catholic Nun, which is in compliance with her R-1 visa.” The letter did not provide a description of the work performed by the beneficiary during the qualifying period.

In the document entitled “Certificate of Vows,” submitted in response to the May 24, 2011 Request for Evidence, the petitioner included the following:

**Education:**

[REDACTED]  
Seattle university, Seattle WA, MA (transformative spirituality) 2001  
Graduate Theological Union, Berkeley, CA PhD (Christian spirituality) 2008

**Assignments:**

[REDACTED]

As discussed above, the petitioner has not established that the beneficiary was working in a religious vocation for the petitioner during the two years immediately preceding the filing date of the petition. No further evidence has been submitted regarding the nature of the beneficiary’s duties during that period. Therefore, the evidence is not sufficient to establish that the beneficiary was continuously engaged in qualifying religious work during the two-year qualifying period

Additionally, the regulations at 8 C.F.R. §§ 214.2(r)(3)(ii)(E), as were in effect when the beneficiary was approved as an R-1 nonimmigrant, required an authorized official of the organization to provide the “name and location of the specific organizational unit of the religious organization” for which the alien would work. The regulation at 8 C.F.R. § 214.2(r)(6) stated:

*Change of employers.* A different or additional organizational unit of the religious denomination seeking to employ or engage the services of a religious worker admitted under this section shall file Form I-129 with the appropriate fee ... Any unauthorized change to a new religious organizational unit will constitute a failure to maintain status...”

The current regulations at 8 C.F.R. § 214.2(r) were published on November 26, 2008. The regulation at 8 C.F.R. § 214.2(r)(2) provides that “[a]n alien my work for more than one qualifying employer as long as each qualifying employer submits a petition plus all additional required documentation as prescribed by USCIS regulations.”

Further, the regulation at 8 C.F.R. § 214.1(e) provides that a nonimmigrant may engage only in such employment as has been authorized. Any unlawful employment by a nonimmigrant constitutes a failure to maintain status.

In this instance, the beneficiary’s R-1 status during the qualifying period only authorized her employment with the named [REDACTED] in Marylhurst, Oregon. The petitioner stated on the “Certificate of Vows” that the beneficiary was

teaching [REDACTED] beginning in 2009, but record does not indicate that [REDACTED] filed a petition on the beneficiary's behalf. Accordingly, the petitioner has not established that such employment was authorized and therefore it is not considered qualifying work. Additionally, the "Certificate of Vows" states that the beneficiary completed studies at the Graduate Theological Union, in Berkeley, California in 2008. The petitioner has not indicated the location or nature of the beneficiary's religious work during 2008, but the AAO notes that any work performed by the beneficiary for an organizational unit other than [REDACTED] without separate authorization would be considered unauthorized employment and therefore not qualifying experience.

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.