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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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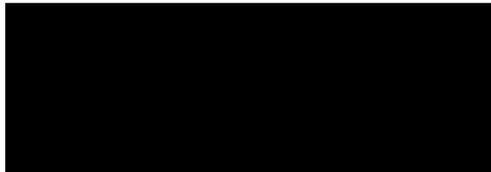
DATE: **JUN 22 2012** OFFICE: CALIFORNIA SERVICE CENTER



IN RE: Petitioner: [Redacted]
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:



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,

M. Brando
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 remand the petition to the California Service Center for further consideration and action.

The petitioner is a religious order for nuns in the [REDACTED]. 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 an extraordinary minister of the sacrament/liturgical director/sacristan/nun. The director determined that the petitioner had failed to establish that its organization qualifies as a tax exempt non-profit religious organization, that the beneficiary has been a member of the same denomination as the petitioner's organization for the two years immediately preceding the filing of the petition, that the beneficiary is qualified as a minister, that the beneficiary has been performing full-time work throughout the qualifying period, and that it has the ability to compensate the beneficiary.

On appeal, counsel asserts that the petitioner submitted the Form I-360 along with its requisite evidence as well as a Form I-485 on behalf of the beneficiary on November 22, 2010. Counsel states that U.S. Citizenship and Immigration Services (USCIS) returned the Form I-485 and the supplemental information regarding the Form I-360 to the petitioner, as it deemed the Form I-485's priority date not to be current. Counsel highlights that USCIS denied the Form I-360 without requesting additional evidence. Counsel states that USCIS date stamped the petitioner's submitted Form I-360 materials, which it later returned to the petitioner. The petitioner resubmits these materials on appeal, bearing the date stamp of November 22, 2010, the same date that the petitioner filed the Form I-360.

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 issues on appeal are whether the petitioner has established that its organization qualifies as a tax exempt non-profit religious organization, that the beneficiary has been a member of the same denomination as the petitioner's organization for the two years immediately preceding the filing of the petition, that the beneficiary is qualified as a minister, that the beneficiary has been performing full-time work throughout the qualifying period, and that it has the ability to compensate the beneficiary.

The first issue on appeal is regarding whether the petitioner has demonstrated that it is a 501(c)(3) federally tax exempt religious organization. The USCIS regulation at 8 C.F.R. § 204.5(m)(5) states:

Bona fide non-profit religious organization in the United States means a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the IRS confirming such exemption.

Tax-exempt organization means an organization that has received a determination letter from the IRS establishing that it, or a group that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the Internal Revenue Code of 1986 or subsequent amendments or equivalent sections of prior enactments of the Internal Revenue Code.

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

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or
- (iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or

equivalent sections of prior enactments of the Internal Revenue Code, as something other than a religious organization:

- (A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;
- (B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;
- (C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and
- (D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

The petitioner has submitted a copy of an Internal Revenue Service (IRS) 501(c)(3) determination letter dated January 19, 2001, stating that the [REDACTED] is tax exempt. The petitioner also submitted a letter from the IRS dated June 4, 2004, stating that all educational, charitable, and religious institutions that the [REDACTED] in the United States operates are entitled to federal tax exemption. The petitioner further submitted a copy of the [REDACTED] from 2008, reflecting that the petitioner's organization is one of the church's official components. As the director did not have the opportunity to review this evidence prior to the appeal, the AAO will remand the petition in order for the director to determine whether such evidence satisfies 8 C.F.R. § 204.5(m)(8).

The second issue on appeal is regarding whether the petitioner has demonstrated that the beneficiary has been a member as the same denomination as the petitioner's organization for the two years immediately preceding the filing of the petition. The USCIS regulation at 8 C.F.R. § 204.5(m)(5) states:

Denominational membership means membership during at least the two-year period immediately preceding the filing date of the petition, in the same type of religious denomination as the United States religious organization where the alien will work.

The petitioner submitted a signed letter from [REDACTED] of the petitioner's organization attesting to the fact that the beneficiary has been a practicing member of its religious congregation as a Catholic nun for the past approximately fifteen years. The letter reflects that the beneficiary was consecrated as a nun on [REDACTED] and took her final vows on [REDACTED] in Nigeria. The petitioner submitted signed letters from the beneficiary addressed to God regarding her commitments made on those two separate dates. The petitioner submitted copies of

two letters, respectively dated September 20, 2003 and April 18, 2007, reflecting that the beneficiary was posted to work as a nun from those dates forward as a nun at two separate locations in [REDACTED]. The petitioner submitted evidence reflecting that the beneficiary took her final vows on [REDACTED] including an [REDACTED] signed letter from the [REDACTED] section of the petitioner's organization inviting her to do so and copies of official photos and programs regarding the beneficiary's vow ceremony on that date. As the director did not have the opportunity to review this evidence prior to the appeal, on remand the director should consider whether such evidence satisfies the regulation at 8 C.F.R. § 204.5(m)(1).

The remaining issues on appeal are all related to a determination regarding the beneficiary's proffered position. On the Form I-360, the petitioner indicated that the proffered position was for a minister. Based upon that information, the director determined that the petitioner had failed to establish that the beneficiary qualified as a minister, that the beneficiary had the requisite two years of continuous experience, and that the petitioner had the ability to compensate the beneficiary. Additional evidence submitted on appeal, however, indicates that the petitioner is, in fact, a nun. For instance, the petitioner submitted a signed letter from [REDACTED] of the petitioner's organization attesting to the fact that the beneficiary has been a practicing member of its religious congregation because she has been a Catholic nun for over fifteen years. The letter reflects that the beneficiary became consecrated to be a nun on [REDACTED] and took her final vows on [REDACTED] in [REDACTED]. The petitioner submitted signed letters from the beneficiary addressed to God regarding her commitments made on those two dates. The petitioner submitted copies of two different letters, respectively dated September 20, 2003 and April 18, 2007, reflecting that the beneficiary was posted to work as a nun from those dates forward as a nun at two separate locations in [REDACTED]. The petitioner submitted evidence reflecting that the beneficiary took her final vows on [REDACTED], including an April 27, 2002 signed letter from the [REDACTED] section of the petitioner's organization inviting her to do so and copies of official photos and programs regarding the beneficiary's vow ceremony on that date.

Regarding the beneficiary's work during the two-year period preceding filing, the petitioner submitted a copy of a signed letter from [REDACTED] of the petitioner's organization in [REDACTED] dated April 18, 2007, stating that the beneficiary would be working as a nun serving as the [REDACTED] for a period of three years. The petitioner's letter of support further confirmed that the beneficiary performed duties as a nun serving as a school principal in that same area of [REDACTED] during that same time period. The petitioner submitted an August 20, 2010 signed letter from [REDACTED] of the petitioner's organization in [REDACTED] attesting to the beneficiary's performance of full-time work as a nun since September 16, 1995.

As the beneficiary is a nun, the evidence should be analyzed in terms of a vocation. Therefore, on remand, the director should consider whether such evidence is sufficient to establish the beneficiary's eligibility. 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 AAO for review.