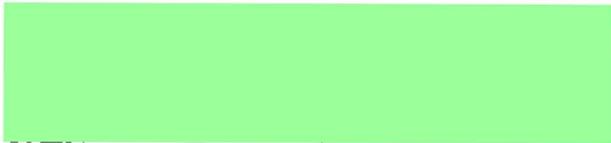




U.S. Citizenship  
and Immigration  
Services

(b)(6)

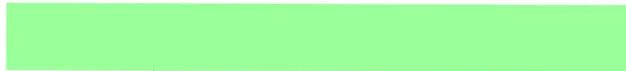


DATE: **FEB 04 2013**

Office: CALIFORNIA SERVICE CENTER

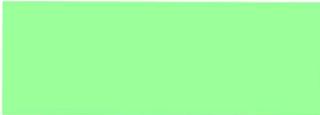
FILE: 

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:



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,

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

(b)(6)

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) remanded the matter for issuance of a new decision. The director again denied the petition and, following the AAO's instructions, certified the decision to the AAO for review. The AAO will affirm the director's decision.

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 an "extraordinary minister of the Sacrament/Liturgical director/Sacristan." The director determined that the petitioner had not established how it intends to compensate the beneficiary.

On certification, counsel asserts that the petitioner is a religious order whose members take a vow of "chastity, poverty and obedience. Therefore, their members do not have expectation of salaried compensation." Counsel submits a brief and additional documentation on certification.

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, 2015, 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, 2015, 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 issue presented is whether the petitioner has established how it intends to compensate the beneficiary.

(b)(6)

The regulation at 8 C.F.R. § 204.5(m)(10) provides that the petitioner must submit:

*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 [Wage and Tax Statement] 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.

On the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, the petitioner stated:

[The beneficiary] will be compensated by the organization with a monthly stipend of \$500 as provided in the constitution of the order for all its members. She will also receive room and board, food and transportation. All this, as a continuation of what she has been receiving since her membership with his order. The stipend covers her communication and personal needs.

In an undated letter submitted in support of the petition, filed on November 22, 2010, the petitioner stated that the beneficiary had been working for the petitioner in an approved R-1 nonimmigrant religious worker status since February 2010. In a letter dated July 26, 2010, the regional superior for the region of the stated:

[The beneficiary] is compensated with a monthly allowance as approved for all Nuns in our religious Order and as she has been receiving since her membership in our religious Order. This allowance is in consideration with the nature of the area one is assigned and in accordance with the dictates of our Constitution and the code of Canon Law by which our religious order is informed [sic] and of which we abide . . . She will continue to receive accommodations in the convent (religious house), feeding, health care coverage, feeding and transportation, clothing and others for the duration of her stay as a religious nun in this Holy Order.

The petitioner submitted a copy of its constitution. The pages are poorly copied, and the tops of several pages have been truncated. However, even if the constitution provides that the order must provide its members with room and board, it provides no evidence of the petitioner's financial ability to do so. The petitioner also submitted an undated budget that is specifically for the beneficiary and reflects income of \$1,360 from a "Job 1" and "Overtime/Donations/Gifts." The budget also reflects monthly expenditures of \$700 for personal "needs feeding, medication, cell phone/Internet, transportation/gas," clothing, and vacation. The petitioner also submitted an

“Annual Financial Plan” for the beneficiary for 2010-2011, that shows annual expenses of \$21,000. The petitioner, however, did not provide evidence of the income that is allegedly attributed to the beneficiary, and no evidence of any ability to meet the expenses of its budget.

The director denied the petition, finding that the petitioner did not submit any verifiable documentation of how it intends to compensate the beneficiary.

On certification, counsel asserts:

[T]he first and foremost duty of all religious [sic] is to be the contemplation of divine things and assiduous union with God in prayer. . . .

In the light of the above, Canon 670 of the 1984 Code of Canon Law which is the universal law guiding the members of the Roman Catholic Church further provides that institutes of consecrated life “must supply the members with all those things which are necessary to achieve the purpose of their vocation according to the norms of their constitution”. Such necessities include shelter, food, clothing and any other basics to enable members live [sic] their vows and remain faithful to their vocation. Thus, salaried compensation is not anticipated. As members live a community life, the Petitioner Congregation and other similarly situated congregations of consecrated life ensure that each community has enough to take care of members residing thereof.

On certification, the petitioner submits a copy of an October 2012 monthly mortgage statement indicating a mortgage payment of \$1,400.48 but that does not identify the property that is the subject of the mortgage. The petitioner also submits a copy of its monthly budget that budgets for, *inter alia*, a \$1,450 house mortgage payment and for the “sisters monthly allowance” of \$2,000. The petitioner submitted a copy of a September 19, 2012 “Deposit Account Balance Summary” from [REDACTED] indicating that the petitioner has maintained an account with the bank since February 2005, has a current balance of \$10,086.65, and has carried an average balance of \$5,116. The petitioner also submitted a partial copy of its July 21, 2012 through August 20, 2012 statement from the bank, reflecting a beginning balance of \$7,186.35 and an ending balance of \$10,086.65.

The petitioner provides a copy of a September 21, 2012 letter from the [REDACTED] signed by [REDACTED] stating that the petitioner has maintained an account with the bank since 2007. Ms. [REDACTED], who does not identify her title or position, provides no other information about the petitioner. The petitioner submits partial copies of its monthly bank statements from [REDACTED] for April and August 2012. The April statement shows a beginning balance of \$204.42 and an ending balance of \$174.06. The August statement shows a beginning balance of \$1,712.48 and an ending balance of \$1,176.56. The August statement also reflects a payment of \$1,400.48 to [REDACTED].

(b)(6)

The petitioner submits copies of four checks written to the beneficiary on checks of the [REDACTED] in [REDACTED] in March and April 2012. The checks are numbered 1119, 1120, 1122, and 1123, and reflect respective amounts of \$261.12 on March 7, \$241.92 on March 12, \$281.12 on April 3, and \$164.16 on April 30. The first three checks contain illegible annotations on the back of the checks but contain no evidence of bank processing on the front. These first three checks also contain an endorsement but the endorsement is by the same individual who signed the checks. The signatures appear to be that of the beneficiary. The latter check contains no endorsement and no evidence that it has been processed by the bank. In an August 19, 2012 letter, the petitioner states:

Please note that Our Order operates a common fund, sisters anywhere in the United States and overseas are taken care of by this Common on [sic] fund, regardless of her place of work and residence. This explains of [sic] the copies of checks made to [the beneficiary] in the month of March and April 2012 when she was in one of our houses on relieve [sic] duty. Monthly allowances of the sisters are provided either in cash or checks. [The beneficiary] has been receiving care in every respect since her stay in the US, she will keep receiving her allowances, room and board, transportation, feeding, welfare as needed.

The petitioner submitted no evidence to corroborate the assertions in the above statement. 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 petitioner's evidence does not contain verifiable documentation of how it intends to compensate the beneficiary. While the petitioner submits a mortgage statement with a mortgage payment of \$1,400.48, it does not identify the location of the mortgaged property. The August 2012 bank statement indicates a payment to the mortgage company; however, the April 2012 statement does not reflect a similar payment. Accordingly, it is not clear that the property was available to house the beneficiary when the petition was filed on November 22, 2010. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). Additionally, the petitioner submitted no other documentation to establish the size of the mortgaged property and whether it provides sufficient space to provide room and board to (apparently) four nuns.

The petitioner also submitted insufficient documentation to establish that it had the financial ability to pay the beneficiary the proffered allowance of \$500 as of the date the petition was filed. While the statement from [REDACTED] indicates that the petitioner maintained an average balance of \$5,116 in its account since its opening in 2005, averages can be skewed in either direction by larger or smaller deposits or withdrawals over the seven-year period. The petitioner submitted no documentation of its financial resources, either from [REDACTED] or [REDACTED] during 2010 or 2011.

The petitioner states that the beneficiary has been working with the petitioning organization in an R-1 status since February of 2010 and that she has received a monthly allowance since that date. However, the petitioner submitted no documentation of its payment of that allowance to the beneficiary. The AAO notes that the checks allegedly written to the beneficiary were during a time that she was in a temporary absence from the petitioning organization.<sup>1</sup> Furthermore, the checks allegedly written to the beneficiary by the [REDACTED] organization are questionable. As discussed previously, the checks do not, on their face, indicate that they have been processed by the bank. Furthermore, they are in sequential order and apparently endorsed by the same individual who wrote them. Doubt cast on any aspect of the petitioner's proof may, of course, 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).

The petitioner has failed to submit verifiable documentation of how it intends to compensate the beneficiary.

The AAO will affirm the certified denial 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 sustained that burden.

**ORDER:** The director's certified decision of September 11, 2012 is affirmed. The petition is denied.

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<sup>1</sup> The AAO further notes that the beneficiary's approved R-1 visa would have authorized her to work only for the petitioning organization. Any work for another organization would violate the terms of her R-1 visa and render her out of status, thereby interrupting the continuous experience requirement of the regulation at 8 C.F.R. § 204.5(m)(4).