

(b)(6)



U.S. Citizenship  
and Immigration  
Services

[Redacted]

DATE: FEB 27 2014 OFFICE: CALIFORNIA SERVICE CENTER [Redacted]

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:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in cursive script, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition. The director dismissed subsequent motions to reopen and reconsider the decision and the Administrative Appeals Office (AAO) rejected an appeal filed by the petitioner's intended employer for lack of standing. Following instructions from the AAO, the director reissued the decision denying the petition in order to provide the petitioner an opportunity to file a timely appeal. The matter is again before the AAO on appeal. The AAO will withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, the AAO will remand the petition for further action and consideration.

The self-petitioner<sup>1</sup> seeks classification 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 with the [REDACTED] a Roman Catholic religious order. The director determined that the petitioner had not established that there was a qualifying position available for her as a special immigrant religious worker and dismissed the petition.

On appeal, the petitioner submits a statement from the petitioner and additional evidence.

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

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<sup>1</sup> The petitioner asserts that it was not her intention to "self-petition" for the proffered position, and a letter from the [REDACTED] in support of the petition indicated that organization's intent to petition for the beneficiary. Although Part 1 of the Form I-360 petition identifies [REDACTED] as the petitioner, Part 10 of the Form I-360, "Signature," shows the signature not of any official from [REDACTED], but of the alien herself. An applicant or petitioner must sign his or her own application or petition. 8 C.F.R. § 103.2(a)(2). Thus, the alien, and not [REDACTED], has taken responsibility for the content of the petition. The regulation at 8 C.F.R. 204.5(m)(6) permits the Form I-360 petition to be filed "either by the alien or by his or her prospective United States employer." Accordingly, the petition was properly filed.

(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 issue to be discussed is whether the petitioner established that she will be employed in a qualifying position as a religious worker.

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:

*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.

The regulation at 8 C.F.R. § 204.5(m)(7) requires an authorized official of the prospective employer to complete, sign and date an attestation providing specific information about the employer, the alien, and the terms of proposed employment.

The petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on September 10, 2007. The petitioner listed her address on the petition as “

\_\_\_\_\_” Accompanying the petition, the petitioner submitted a letter from former counsel, \_\_\_\_\_ which stated in part:

[The petitioner] will continue to serve in the capacity of a religious worker in the \_\_\_\_\_. [The petitioner] will be assigned by the Order to perform a permanent pastoral work as a Service Coordinator at the mission office at \_\_\_\_\_.

(Please see Exhibit 7, a copy of a letter from \_\_\_\_\_, confirming that they have offered [the petitioner] a permanent full time position, as the Coordinator of Services and Religious Minister as a professed nun.[ ]) . . . .

[The petitioner] came to the United States at the request of the \_\_\_\_\_ Louisiana to work as a religious worker for the ministry of the \_\_\_\_\_ Louisiana and works for a bona fide nonprofit, religious organization. . . .

\_\_\_\_\_ has sufficient resources and intend to maintain [the petitioner] as a full-time employee for an indefinite period of time.

The petitioner submitted a letter in support of the petition from \_\_\_\_\_ Superior, \_\_\_\_\_. The letter stated that the petitioner sought classification as a special immigrant religious worker in order to pursue “her religious vocation as a Roman Catholic Religious Sister in service to the \_\_\_\_\_ at the request of her Religious Superiors.” The letter further stated:

On August 12, 2005, [the petitioner] was first admitted to the United States in valid R-1 status, to serve \_\_\_\_\_ in obedience to her Religious Superiors. Since that time, at the request of her Religious Superiors in her community, [the petitioner] has served the \_\_\_\_\_ providing spiritual and physical care to the aged and assisted \_\_\_\_\_ until his death last \_\_\_\_\_. She is presently taking care of \_\_\_\_\_.

As a member of \_\_\_\_\_, [the petitioner] receives full room and board, health insurance, pension, and living expenses. \_\_\_\_\_ employs well in excess of 100 individuals worldwide, and as Superior and a financial officer of \_\_\_\_\_, I can assure you that it has sufficient resources to maintain [the petitioner] in accordance with C.F.R. 204.5(g)(2).

[A]s previously mentioned, \_\_\_\_\_, for whom [the petitioner] seeks to serve by virtue of her RELIGIOUS VOCATION, is a tax-exempt, non-profit 501(c)(3) status of these Roman Catholic Church entities (Letter dated June 10, 2003).

On October 6, 2007, the director issued a Request for Evidence (RFE), which included the following instructions:

Submit an original signed and dated letter from an authorized official, from the catholic diocese presiding over your area, stating the diocese's intent to sponsor the beneficiary as a special immigrant religious worker for your organization. This letter is required to ensure the petitioning organization is extending a valid job offer.

In response to the RFE, the petitioner submitted a letter, dated December 5, 2007, from [REDACTED], asserting that the petitioner serves as a nun "within the congregation of [REDACTED] within the geographical and ecclesiastical jurisdiction of the [REDACTED] and seeks to continue to serve as a [REDACTED] within our Diocese." The letter further stated: "As Bishop of the Diocese of [REDACTED] I attest that the [REDACTED] have the ability and the intent to see to the maintenance of [REDACTED] as offered."

The petitioner also submitted January 15, 2007 letter from [REDACTED], confirming "that we have offered you a permanent, full-time position as the Coordinator of Services and Religious Minister as a professed nun of [REDACTED] contingent upon the approval of your permanent resident application by the U.S. Citizenship and Immigration Services."

On March 15, 2010, the director issued a Notice of Intent to Deny the petition (NOID) based, in part, on the negative findings of a compliance review. The director noted that the letter from counsel accompanying the petition indicated that the petitioner would work for the [REDACTED]. The director stated:

A telephonic interview was conducted on October 28, 2008, with [REDACTED] Secretariat for Ministry of Pastoral Services Personnel in which the inspecting officer was advised that internal inconsistencies exist with the Order causing difficulties in tracking the Sisters and verifying their locations. The Sisters are not suppose[d] to act on their own and do not have the authority to petition on behalf of the Diocese. The Diocese has not extended an employment offer for an indefinite period of time.

The director afforded the petitioner an opportunity to submit additional information, evidence or arguments in response to the notice. The director also instructed the petitioner to submit a completed employer attestation in compliance with the current regulations for special immigrant religious workers which took effect on November 26, 2008.

In response to the NOID, the petitioner submitted an employer attestation, signed by [REDACTED]. The attestation stated that the beneficiary would be working at [REDACTED]. In an accompanying letter, [REDACTED] continuing intent to employ the petitioner.

On June 24, 2010, the director issued a decision denying the petition based on the petitioner's failure to overcome the grounds discussed in the NOID. The director found that the address where the beneficiary would work as listed on the submitted employer attestation was not consistent with the original Form I-360 petition and supporting documents, and that the [REDACTED] had not offered employment to the beneficiary. The decision was mailed to [REDACTED] Louisiana. The director dismissed subsequent motions by [REDACTED] to reopen and reconsider the decision. On April 2, 2012, the AAO rejected a subsequent appeal by [REDACTED] finding that the organization lacked standing as it had not filed the petition. Following instructions from the AAO, the director reissued the decision denying the petition on June 11, 2013, in order to provide the petitioner an opportunity to file a timely appeal.

On appeal, the petitioner asserts that, contrary to the statements of former counsel, now deceased, the petitioner's intended employer was never the [REDACTED]. The petitioner states that [REDACTED] "never acted on behalf of the Diocese," but instead consistently indicated that it would be the petitioner's employer. The petitioner submits a letter, dated August 8, 2013, from [REDACTED], USA/Canada Region, in [REDACTED] New York, which states:

Based on the erroneous inference which was made by [former counsel], one can now understand why the immigration could have called the [REDACTED] to get clarification about [the petitioner's] "indefinite employment" with them. The information provided by [REDACTED] to an extent was correct because at no time was [the petitioner] an employee of the Diocese, neither had she been offered indefinite employment with them.

[REDACTED] states that the petitioner was at all times to be employed in the [REDACTED] area and that the [REDACTED] address listed on the supplemental attestation to the petition was the address of the Zonal Headquarters for [REDACTED], not the address where the petitioner was to be employed. [REDACTED] indicates that any indication in the attestation that the petitioner was actually to be employed in Texas was in error.

The petitioner also submits a letter, dated August 9, 2013, from the [REDACTED] [REDACTED] sponsored the petitioner as a special immigrant religious worker in 2007 "with the full support of the Diocese." Additionally, the petitioner submits a copy of a letter, dated November 3, 2010 and originally submitted with [REDACTED]'s rejected appeal, from the Bishop of the [REDACTED] stating that the petitioner was carrying on her religious vocation within the congregation of the [REDACTED] and within the geographical and ecclesiastical jurisdiction of the [REDACTED]. The Bishop noted that the petitioner was serving as a religious worker for the [REDACTED] and that the [REDACTED] had the ability and intent to see to the petitioner's maintenance and the petitioner would not be required to seek supplemental income or become a public charge.

The director found that the petitioner failed to establish that she would be employed in a qualifying, full-time position by the [REDACTED]. However, the petitioner has established that the submitted

documentary evidence consistently identified [REDACTED] as her intended employer. Further, the petitioner has submitted letters from the [REDACTED] indicating that the Diocese acknowledges and advocates the proffered employment of the beneficiary by [REDACTED]. The petitioner's explanations on appeal are consistent with the evidence of record. The petitioner has, therefore, overcome the only stated basis for denial of the petition.

However, review of the record shows additional grounds of ineligibility. 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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The petitioner has not established that she had the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition. The 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. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work in lawful immigration status throughout the two-year period immediately preceding September 10, 2007.

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.

The petitioner claims to have been continuously employed as a Roman Catholic nun for a period of time exceeding 25 years, and asserts that she has worked for [REDACTED] in the United States since August 2005. A copy of the beneficiary's Form I-94, Departure Record, indicates that she entered the United States on February 15, 2006. 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). On the Form I-360 attestation, the self-petitioner's compensation is listed as "full medical/health insurance coverage, [and] other benefits in accordance with the rules and regulations of the [REDACTED]." In a letter dated January 15, 2007, [REDACTED] stated that the self-petitioner would receive as compensation free room and board at its [REDACTED] convent, full medical/health insurance coverage, annual remuneration of \$17,659 and other benefits in accordance with the rules and regulations of the [REDACTED]. The petitioner submitted evidence that she professed her final vows of obedience, poverty and chastity in 1987.

If an alien was employed in the United States during the two-year qualifying period immediately preceding the filing of the petition, the regulation at 8 C.F.R. § 204.5(m)(11) requires the petitioner to submit Internal Revenue Service (IRS) documentation for any salaried compensation or for any non-salaried compensation, if available. The regulation requires comparable evidence for religious work performed outside the United States during the qualifying period. The self-petitioner has not provided, and the record does not contain, information from the IRS such as Forms W-2 or certified tax returns for salaried compensation or other IRS documentation for non-salaried compensation for earnings while in the United States. Nor does the record contain other verifiable evidence of non-salaried compensation received by the beneficiary or an explanation for failure to provide any such evidence. To the extent that the petitioner was outside the United States for a portion of the qualifying period, the petitioner has not provided comparable evidence of compensation for that employment. As such, the self-petitioner has not established that she has two years of qualifying prior experience immediately preceding the filing of the petition herein.

Additionally, the petitioner has not established how it intends to compensate the beneficiary. The USCIS regulation at 8 C.F.R. § 204.5(m)(10) states:

*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 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.

As discussed previously, the petitioner has submitted letters from [REDACTED] indicating its intent to compensate to the beneficiary and asserting its ability to do so. However, the record contains no documentary evidence of the employer's ability to provide the proffered compensation. 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)). Neither the petitioner nor the prospective employer has provided budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. Additionally, no IRS documentation, such as IRS Form W-2 or certified tax returns, if available, was provided. No explanation was provided as to why IRS documentation was not presented nor was comparable verifiable documentation submitted to establish that the petitioner was being compensated at the level stated in the Form I-360, or that the prospective employer had the ability to so compensate the beneficiary.

Finally, the USCIS regulation at 8 C.F.R. § 204.5(m)(12) states:

*Inspections, evaluations, verifications, and compliance reviews.* The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

The previous compliance review conducted by USCIS found that the [REDACTED] had not extended a job offer to the petitioner and that [REDACTED] was not authorized to act on behalf of the diocese. However, as discussed previously, the petitioner's evidence consistently identified [REDACTED] as the petitioner's prospective employer and the petitioner has submitted letters of support from the [REDACTED]. The director shall determine whether the petitioner has satisfied the regulation at 8 C.F.R. § 204.5(m)(12) and whether an additional compliance review, onsite inspection or other verification of the petitioner's claims is appropriate in the instant petition.

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. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for additional proceedings and the issuance of a new decision in accordance with this decision. If the director's decision is adverse to the petitioner, the matter shall be certified to the AAO for review.