

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY

[Redacted]

D13

Date: **JAN 25 2012**

Office: CALIFORNIA SERVICE CENTER

FILE: [Redacted]

IN RE:

Petitioner:

Beneficiary:

[Redacted]

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1)

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a Catholic religious order. It seeks classification of the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as a nun. The director determined that the petitioner had not established that the beneficiary will be working in the United States at the request of the petitioner and had failed to establish that the “organization named Our Lady of Angels Maternity Shelter . . . qualifies as a bona fide nonprofit religious organization in the United States.”

On appeal, counsel states that “the denial was based solely on confusion regarding the petitioning organization.” Counsel submits a brief and additional documentation in support of the appeal.

Section 101(a)(15)(R) of the Act pertains to an alien who:

- (i) for the 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; and
- (ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii).

Section 101(a)(27)(C)(ii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii), pertains to an alien who seeks to enter the United States:

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
- (II) . . . 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) . . . 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.

The first issue presented is whether the petitioner has established that the beneficiary seeks to enter the United States to work for the petitioning organization.

The regulation at 8 C.F.R. § 214.2(r)(1)(iv) provides that to be approved for temporary admission to the United States, or extension and maintenance of status, for the purpose of conducting the activities of a religious worker, the alien be coming to or remaining in the United States at the request of the petitioner to work for the petitioner.

The Form I-129, Petition for a Nonimmigrant Worker, identifies the Sisters of Sacred Sciences as the petitioner and indicates that the beneficiary would be working at [REDACTED] the petitioner's address. In its August 24, 2010 letter submitted in support of the petition, the petitioner stated:

[The beneficiary] will function as a consecrated religious sister[and will] be assigned to our ministry in [REDACTED]. She will be required to celebrat[e] the sacraments of the Roman Catholic Church and offer[] care, both spiritual and real to her local community. This will include serving at [REDACTED] as part of her duties of serving the poor.

In a request for evidence (RFE) dated February 23, 2011, the director instructed the petitioner to "[s]ubmit documentary evidence to show activity at both work locations." The director also advised the petitioner that:

There was no listing of Official Catholic Directory submitted to show that both the petitioner and the requested [REDACTED] location are included in the Catholic group exemption given by the Internal Revenue Service (IRS).

Submit evidence to verify that the petitioner and facility at the requested work location are belonging to a group exemption shown on the IRS certification letter.

In response, counsel stated that the sisters of the petitioning organization are "at the service and ministry" of the [REDACTED] and are asked to serve where he requests. Counsel further states that the petitioning order does not maintain the [REDACTED] and that it is "only a location of their ministry and not their mother home where they reside and have their established residency." The petitioner submitted a copy of a June 26, 2007 letter from the [REDACTED] the Most [REDACTED] in which he confirmed that the sisters of the petitioning organization would minister at [REDACTED] and documentation establishing that it owned the property located at [REDACTED] which it maintained as its convent.

The petitioner submitted a copy of a July 12, 2010 letter from the IRS confirming the group exemption for the United States Conference of Catholic Bishops and those organizations listed in its 2010 Official Catholic Directory. The petitioner also provided an excerpt from the Official Catholic Directory indicating that it is included as part of the Diocese of Austin. Although counsel stated that the petitioner was submitting documentation to establish that [REDACTED] this documentation is not included in the record. In denying the petition, the director stated:

[I]t is concluded that the beneficiary performs work under the Bishop's request because the beneficiary performs service at the behest of the Bishop and that the petitioner has no ownership or control. Thus, the petition was improperly filed

because it was not filed by the Diocese of Austin as the beneficiary [is] coming to the U.S. to work for the Diocese of Austin and not for the petitioner.

On appeal, counsel states that the petitioner is a religious order of the Roman Catholic Church, who in its "active apostolic life" serves the poor. "In this instance, serving homeless, pregnant woman at a Catholic maternity shelter." Counsel further states:

Diocesan religious workers are directly attached to the bishop of a diocese and are, for the most part, full-time in parish ministry (although some teach or have other jobs.) However, Religious Order priests, deacons, and nuns owe their first loyalty to their religious superiors and work full-time in parishes only if their superior and a bishop have made an agreement for them to do so.

Thus, Canon Law of the Roman Catholic Church does not allow a Diocesan Bishop (nor the Diocese of Austin) to directly assign nor employ a religious order member. [Emphasis omitted.]

Nothing in the record supports counsel's statements. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Nonetheless, the record sufficiently establishes that the beneficiary will work for the petitioning organization and not the Diocese of Austin. The fact that the Bishop of Austin assigns a specific location for the religious order to work does not mean that the individual member of that order works for the diocese rather than for the order. The record reflects that the beneficiary's compensation will be provided by the order and not by the diocese. The director's determination that the petitioner has not established that the beneficiary seeks to enter the United States to work for the petitioning organization is withdrawn.

The second issue presented is whether the petitioner has established that the [redacted] is a bona fide religious organization. The director's determination appears to be based on the theory that the beneficiary will work for the Diocese of Austin rather than the petitioning organization.

The regulation does not require the petitioner to establish that the location at which the alien is to work qualifies as a religious organization; rather the petitioner must establish that the organization for which the alien will work is a bona fide nonprofit religious organization and that the proffered position is a religious occupation or vocation. *See* 8 C.F.R. §§ 214.2(r)(1)(i),(iii).

The record sufficiently establishes that both the petitioner and the Diocese of Austin are bona fide nonprofit religious organizations and that the beneficiary seeks to enter the United States to practice her vocation as a nun. Accordingly, the petitioner is not required to establish that the

[REDACTED] is a bona fide nonprofit religious organization, and the director's decision to the contrary is withdrawn.

The director made no determination that a pre-approval inspection of the petitioning organization is necessary, and the AAO agrees. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

ORDER: The director's decision is withdrawn. The appeal is sustained and the petition is approved.