



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF T-L-O-J-O-

DATE: JUNE 24, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner is a faith-based medical outreach organization that accepts members of all denominations. It seeks to classify the Beneficiary as a nonimmigrant religious worker to perform services as a "Catholic Nun." *See* section 101(a)(15)(R) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R). This nonimmigrant classification allows non-profit religious organizations, or their affiliates, to temporarily employ foreign nationals as ministers, in religious vocations, or in other religious occupations in the United States.

The California Service Center Director denied the petition, finding the record did not demonstrate that the Beneficiary possessed the requisite two years of membership in the same type of denomination as the Petitioner. The Director also found the Petitioner did not establish that the Beneficiary would be working in a qualifying religious vocation. The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and argues that it has met all eligibility requirements for the benefit sought.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Non-profit religious organizations may petition for foreign nationals to work in the United States for up to five years to perform religious work as ministers, in religious vocations, or in other religious occupations. The petitioning organization must establish that the foreign national beneficiary has been a member of a religious denomination for at least the two-year period before the date the petition is filed. *See generally* section 101(a)(15)(R) of the Act, 8 U.S.C. § 1101(a)(15)(R).

The implementing regulation at 8 C.F.R. § 214.2(r)(1) requires that to be approved for temporary admission to the United States, or extension of status, a foreign national must:

- (i) Be a member of a religious denomination having a bona fide non-profit religious organization in the United States for at least two years immediately preceding the time of application for admission;

- (ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week);
- (iii) Be coming solely as a minister or to perform a religious vocation or occupation as defined in paragraph (r)(3) of this section (in either a professional or nonprofessional capacity);
- (iv) Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and
- (v) Not work in the United States in any other capacity, except as provided in paragraph (r)(2) of this section.

The regulation at 8 C.F.R. § 214.2(r)(3) provides the following definitions:

*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.

....

*Religious denomination* means a religious group or community of believers that is governed or administered under a common type of ecclesiastical government and includes one or more of the following:

- (A) A recognized common creed or statement of faith shared among the denomination's members;
- (B) A common form of worship;
- (C) A common formal code of doctrine and discipline;
- (D) Common religious services and ceremonies;
- (E) Common established places of religious worship or religious congregations; or
- (F) Comparable indicia of a bona fide religious denomination.

....

*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

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functions, as distinguished from the secular members of the religion. Examples of vocations include nuns, monks, and religious brothers and sisters.

## II. ANALYSIS

The record reflects that the Beneficiary is a member of the Roman Catholic denomination and has taken her final vows as a nun within that denomination. The Petitioner states that it has a “functional affiliation” with the Roman Catholic Church, with which it shares common practices and beliefs. The issues within this appeal are: (1) whether the Beneficiary has the requisite two-year membership in the same type of denomination as the Petitioner; and (2) whether the proffered position qualifies as a religious vocation; specifically, whether the Petitioner’s denomination has a class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion. As discussed in greater detail below, the Director’s findings on both of these issues related to her determination that the Petitioner is not affiliated with Roman Catholicism. As the Director’s denial contained adverse information to which the Petitioner did not have an opportunity to respond, we issued a combined request for evidence (RFE) and a notice of intent to dismiss (NOID) prior to this decision.

For the reasons discussed below, we agree with the Director’s ultimate determination that the Petitioner has not demonstrated eligibility.

### A. Denominational Membership

The Petitioner has consistently indicated that the Beneficiary is a longtime Roman Catholic, and the record includes evidence of her baptism, confirmation, and vows as a nun. Within the Employer Attestation in Supplement R of the Form I-129, the Petitioner stated it is “non-denominational in our membership” and affiliated with the “Universal Roman Catholic Church . . . under the leadership of Pope Francis.” A copy of the Petitioner’s “Membership Form,” submitted with the petition, described the organization as “a non-denominational, boundless membership organization that works with all denominations.”

In an RFE, the Director noted that submitted organizational literature did not reference the Petitioner’s affiliation with Roman Catholicism. She therefore requested documentation regarding the Petitioner’s denomination, including evidence that it is governed or administered under a common type of ecclesiastical government as the Beneficiary’s denomination, Roman Catholicism, and that it shares one or more of the commonalities listed in the definition of “religious denomination” at 8 C.F.R. §214.2(r)(3). In response, the Petitioner provided an affidavit from ‘ [REDACTED] ’ identified in the record as the organization’s founder and director. [REDACTED] identified himself as a Catholic priest and attested that the Petitioner is “closely affiliated, or has a functional affiliation, with the Roman Catholic Church because of the indicia of commonality in the creed, form of worship, places of worship, and religious services of the two entities.” He also described beliefs and practices of the Petitioner that are shared by Roman Catholicism.

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In denying the petition, the Director referenced information from an “internet search,” which called into question [REDACTED] authority to represent the Roman Catholic denomination and his status as a Catholic priest. The Director found that his statements about the Petitioner’s affiliation with Roman Catholicism were not supported by documentary evidence in the record, and that the Petitioner did not establish the two entities are governed or administered under a common type of ecclesiastical government.

On appeal, the Petitioner provides a copy of a 2005 letter related to a previously filed petition. The letter emphasizes that the organization was founded by a Catholic priest, [REDACTED] and stated that, while it attends to people of all denominations, it operates “under the principles and faith of the universal Catholic Church.” In its brief, the Petitioner maintains that it is affiliated with the Roman Catholic Church, and notes that it was not afforded an opportunity to respond to the derogatory information referenced in the Director’s decision.

We issued a combined RFE and NOID, in part requesting additional evidence to demonstrate that the Petitioner is of the same type of denomination as Roman Catholicism per the regulatory definitions of “denominational membership” and “religious denomination.” In addition, we provided the Petitioner with notice of the derogatory information referenced by the director, including information from a 2012 “Diocesan Memorandum” advising that [REDACTED] “was suspended from the exercise of priestly duties,” and that the petitioning organization has “no recognized status as [an] official Catholic entit[y].”

In response to our notice, the Petitioner indicates that the derogatory information relates to “an internal canonical matter between the priest and the diocese that has nothing to do with the [Petitioner].” It describes the hierarchical structure of the Roman Catholic ecclesiastical government, which includes the Pope as head of the church, bishops who provide guidance to their respective dioceses, which are divided into parishes. The Petitioner does not indicate that it has a similar type of government, but rather that it falls under the same government. It maintains that it “is not claiming that it is a religious denomination in its own right,” but that it is “closely affiliated with the Catholic Church.” The Petitioner states: “The very fact that the letter from the [REDACTED] mentioned something about ‘sanctioning’ the [P]etitioner, goes to show some kind of governance or authority of the diocese over the [P]etitioner, and hence affiliation with the Catholic Church.” However, the referenced passage does not identify any form of governance or authority over the Petitioner; instead it specifically states that the organization is not a Catholic entity.

As examples of its Roman Catholic beliefs and practices, the Petitioner points to its adherence to the Nicene Creed, its high recognition of the Virgin Mary, its operation of a chapel where holy mass is celebrated, and its listing in the ‘ [REDACTED]’<sup>1</sup> That both the Petitioner and the

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<sup>1</sup> The record includes a printout entitled ‘ [REDACTED]’ advertising the Petitioner’s “Quality Life In-Home Care” services on the website [REDACTED]. The Petitioner did not submit documentation indicating that the service providers listed on this website are limited to Roman Catholic organizations. Further, the website’s order form for purchasing online “Product & Services” listings, the section of the website in which the Petitioner is included, does not indicate any such restrictions.

Catholic Church follow the Nicene Creed, venerate the Virgin Mary, and hold holy mass are commonalities consistent with those listed in the definition of religious denomination at 8 C.F.R. § 214.2(r)(3). However, that definition also requires that both entities are governed or administered under a common type of ecclesiastical government. We find the record insufficient to demonstrate that the Petitioner is either part of the same denomination or is governed or administered under a common type of ecclesiastical government with the Roman Catholic Church, to which the Beneficiary belongs. Accordingly, it has not established that the Beneficiary has been a member of the same type of denomination as the Petitioner for at least the two years immediately preceding the petition's filing.

We note that, as another argument in support of its Roman Catholic affiliation, the Petitioner has repeatedly stated that it has filed religious worker petitions on behalf of other Catholic nuns, Catholic priests, and a Catholic monk, all of which were approved by U.S. Citizenship and Immigration Services (USCIS). Its appellate brief emphasized that these individuals worked for the Petitioner "AS CATHOLICS." Even if a service center director had approved the nonimmigrant petitions on behalf of a similarly situated beneficiary, we would not be bound to follow that contradictory decision. Moreover, the law is clear that an agency is not bound to follow an earlier determination where that initial decision was based on a misapplication of the law.<sup>2</sup> Further, USCIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous.<sup>3</sup> While the Petitioner provided copies of several nonimmigrant religious worker approval notices dated between 2005 and 2012, the record does not include documentation regarding the circumstances of those cases. Accordingly, it is unclear whether, at the time of the approvals, the Director found the Petitioner to be a Roman Catholic organization. As stated above, the record in this matter does not demonstrate the organization's affiliation with that denomination.

## B. Religious Vocation

The regulation at 8 C.F.R. § 214.2(r)(1)(iii) requires the Petitioner to demonstrate that the foreign national must: "Be coming solely as a minister or to perform a religious vocation or occupation as defined in paragraph (r)(3) of this section (in either a professional or nonprofessional capacity)." As it relates to religious vocations, the regulation at 8 C.F.R. § 214.2(r)(3) requires the religious denomination to "have a class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion."

The Petitioner stated within the petition that the offered position was that of a Catholic nun, and the Beneficiary's qualifications for the position are that she has been living a life of a religious vocation

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<sup>2</sup> *Glara Fashion, Inc. v. Holder*, 11 CIV. 889 PAE, 2012 WL 352309 \*7 (S.D.N.Y. Feb. 3, 2012); *Royal Siam v. Chertoff*, 484 F.3d 139, 148 (1st Cir. 2007); *Tapis Int'l v. INS*, 94 F.Supp.2d 172, 177 (D.Mass.2000) (Dkt.10); *Louisiana Philharmonic Orchestra v. INS*, 44 F.Supp.2d 800, 803 (E.D.La.1999), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001).

<sup>3</sup> See, e.g. *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988); *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988) (USCIS need not treat acknowledged errors as binding precedent).

as a Catholic nun for over 18 years. In an accompanying letter, the Petitioner stated: “The Catholic Church is a religious denomination known for having individuals, such as nuns, practicing religious vocations, as required by 8 C.F.R. § 214.2(r)(3).” The Director concluded that the Petitioner had not demonstrated that it was affiliated with the Roman Catholic Church, and that it had not established that it has its own class of individuals who meet the regulatory definition of a religious vocation. The Director further found that the record did not contain evidence of the Beneficiary’s formal lifetime commitment through vows, investitures, ceremonies, or similar indications to a religious way of life which is unique to the Petitioner’s own denomination. We note that the record does contain the Beneficiary’s final vows and we therefore withdraw the Director’s finding on that issue. However, the Petitioner has not demonstrated that its denomination has “a class of individuals whose lives are dedicated to religious practices and functions distinguished from the secular members of the religion.” As the Petitioner has not established that it is a Roman Catholic organization, it may not rely on the traditions of the Roman Catholic denomination to show that it has such a class of individuals.

### III. CONCLUSION

For the reasons discussed above, the Petitioner has not established that the Beneficiary was a member of the same type of religious denomination as the Petitioner during the two years immediately preceding the filing of the petition. In addition, the Petitioner has not demonstrated that the proffered position qualifies as a religious vocation, as it has not shown that its denomination has a class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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). Here, the Petitioner has not met that burden.

**ORDER:** The appeal is dismissed.

Cite as *Matter of T-L-O-J-O-*, ID# 15714 (AAO June 24, 2016)