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U.S. Department of Justice
Immigration and Naturalization Service

CI

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: NEBRASKA SERVICE CENTER Date: FEB 27 2003

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: 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)

IN BEHALF OF PETITIONER: [redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a monastery. It seeks classification of 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 a monk. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition. The director also determined that the petitioner had not established that the beneficiary possessed the required two years membership in the denomination. Finally, the director determined that the petitioner had not established that it had the ability to pay the beneficiary the proffered wage as of the filing date of the petition.

On appeal, counsel submits a statement.

The statute and regulations governing classification as a special immigrant religious worker were discussed by the director in his decision. That discussion need not be entirely repeated here. It will be reiterated, however, that 8 C.F.R. § 204.5(m) states, in pertinent part, that each petition for a religious worker must be accompanied by:

> (ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:
>
> (A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

The first issue to be discussed in this proceeding is whether the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

The petition was filed on February 15, 2001. Therefore, the petitioner must establish that the beneficiary was working continuously as a monk from February 15, 1999 until February 15,

2001. The record indicates that the petitioner last entered the United States as a B-1, visitor for business, on June 8, 2000. Part 4 of the Form I-360 submitted by the petitioner indicates that the beneficiary has never worked in the United States without permission.

In a letter dated September 8, 2000, on letterhead from the Saint Anthony Eastern Orthodox Monastery Diocese of Ohio, the [redacted] states that the beneficiary was "canonically tunctured [sic] [redacted] the request of the [redacted] [sic] [redacted] the parent monastery of the petitioner in Romania.

On appeal, the petitioner states that the beneficiary had been a monk at the [redacted] in Romania from February 1998 until June 2000. The petitioner also states that according to the canons of its church, activities of "novice" monks are essentially identical to those of fully indoctrinated monks, and that any novice monk engaged in novice training gains the same training and experience as a regular monk. A letter dated August 28, 2001, from a pastor at the St. Helena Catholic Church of Cleveland, Ohio, also affirms the statements made by the petitioner's representative in reference to the statement regarding the status of a novice monk. The affiliation between the St. Helena Catholic Church and the Eastern Orthodox or Romanian Orthodox Church is not further explained in the evidence submitted.

No additional evidence of these assertions is included in the record. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner lists the duties of "Orthodox Monk" as:

> [E]ngaging in study, prayer and by attending to the needs of our Monastery, including cooking, cleaning and maintenance of the premises.

In a letter dated January 2, 2001, the petitioner states that the beneficiary's duties will encompass "[P]rayer and study, in education [sic] and attending to the needs of the monastic community."

On appeal, counsel argues that the beneficiary meets the requisite two years of experience, that the director erred in his decision, and that the evidence contained in the record meets the criteria. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The beneficiary was a "novice" monk until June 2000, when he

relocated to the United States. The beneficiary did not become a tonsured monk until September 2000. As indicated in the record, from June until September 6, 2000, the beneficiary was in the United States in the non-immigrant classification of B-1, visitor for business. He became a monk on September 8, 2000. His business status in the United States is not explained in the record. In addition, the beneficiary's relocation to the United States during that time further precludes a finding that he was continuously working in a qualifying religious vocation or occupation throughout the requisite period. The unsupported assertions contained in the record do not adequately establish that the beneficiary was continuously performing the duties of a qualifying religious vocation or occupation throughout the two-year period immediately preceding the filing date of the petition. Therefore, the petition must be denied.

The second issue raised by the director in his decision was that the regulations at 8 C.F.R. § 204.5(m)(1) and 8 C.F.R. § 204.5(m)(3)(ii) are clear in stating that the religious worker must have been a member of the same religious denomination as the petitioning organization for the two years immediately preceding the filing of the petition.

In a letter dated January 2, 2001, the petitioner states that the beneficiary was accepted into their monastery to work for the "One Holy Catholic and Apostolic Church." However, the petitioner states that it is of the Eastern Orthodox Monastery Diocese of Ohio. Also included in the record is the Internal Revenue Service's recognition of the petitioner's tax exemption as a religious organization. This document, dated June 26, 2000, indicates the petitioner's name change from Saint Anthony Eastern Orthodox Monastery Old Calendar to St. Anthony the Great Romanian Orthodox Monastery. The relationship of the denominations of the Catholic, Eastern Orthodox, and Romanian Orthodox churches are not further explained.

On appeal, counsel argues that the beneficiary meets this requisite and refers to the documentation submitted.

No further evidence of the affiliation of the churches is included in the record. The record fails to clearly identify the beneficiary's or the petitioner's denomination. The petitioner has not established that the beneficiary was a member of the religious denomination of the petitioning organization during the two-year period preceding the filing date of the petition, and for this reason, the petition must be denied.

The final issue raised by the director in his decision was whether the petitioner had the ability to support the beneficiary. 8 C.F.R. § 204.5(m)(4) requires that each petition for a religious worker must be accompanied by a qualifying job offer from an authorized official of the religious organization at which the

alien will be employed in the United States. The official must state the terms of payment for services or other remuneration. In addition, 8 C.F.R. § 204.5(g)(2) requires that the employing religious organization submit documentation to establish that it has had the ability to pay the alien the proffered wage since the filing date of the petition. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

The petitioner stated that as a monk, the beneficiary would receive no wages for his work, but that he would be provided with housing, food, and clothing, and that he would not be dependent on supplemental employment or solicitation of funds for support.

The petitioner's unaudited Statement of Revenue and Expense for the year ended December 31, 2000, indicates that net losses for the year totaled $35,711.00.

On appeal, counsel states that the petitioner has the ability to support the beneficiary. Counsel also states that the most recent audited financial statements indicating the financial status of the petitioner as of September 30, 2001, have been submitted.

The petitioner's one- and nine-month financial reports as of September 30, 2001, are submitted on appeal. It is noted that the accounting firm's representative states:

> A compilation is limited to presenting in the form of financial statements information that is the representation of management. We have not audited or reviewed the accompanying financial statements and supplementary schedules and, accordingly, do not express an opinion or any other form of assurance on them.

The petitioner's net income for the month is listed as $3,792.26. Total in salaries and wages, while not itemized, is indicated as $7,344.50 for the 9-month period. Total net income is reported as $12,098.14.

In response to the director's request for additional evidence, counsel had stated:

> [W]e object to your request for proof of ability to pay a salary as there [sic] no salary paid. To that end, we object to additional questions that are invasive and not relevant to the present application, such as the number of employees presently working for the Monastery for a salary. Without waiving that objection, please note that the organization does not have any salaried employees at this time.

The authority for determining whether a beneficiary qualifies for benefits under the nation's immigration laws lies with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978.) To be able to make these determinations certain evidence is requested of a petitioner. Failure or refusal to provide this evidence may result in denial of the application or petition.

The petition was filed on February 15, 2001. Therefore, the financial report furnished on appeal cannot be considered, as a petitioner must establish eligibility at the time of filing. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

The pertinent regulations were drafted in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they may not be salaried in the conventional sense and may not follow a conventional work schedule. The regulations distinguish religious vocations from lay religious occupations. 8 C.F.R. § 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. While such persons are not employed *per se* in the conventional sense of salaried employment, they are fully financially supported and maintained by their religious institution and are answerable to that institution.

The petitioner has not furnished the church's annual reports, federal tax returns, or audited financial statements. The documents submitted do not satisfy the regulatory requirements. The petitioner has not adequately established that it has the ability to support the beneficiary without supplemental employment or solicitation of funds for support. For this additional reason, the petition may not be approved.

In reviewing an immigrant visa petition, the Service must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.