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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, D.C. 20536

[redacted]

File: EAC 01 177 53294 Office: Vermont Service Center Date: AUG 21 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)

ON 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 Bureau of Citizenship and Immigration Services (Bureau) 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, Vermont Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner 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 certified nursing assistant at an hourly wage of $12.09.

The director denied the petition finding that the petitioner had failed to establish that the proposed position constitutes a qualifying religious occupation for the purpose of special immigrant classification.

On appeal, counsel for the petitioner submits a written brief and additional documentation.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in § 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 October 1, 2003, 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 October 1, 2003, 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 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 addressed in this proceeding is whether the petitioner has established that the proposed position qualifies as a religious occupation for the purpose of special immigrant classification.

Bureau regulations at 8 C.F.R. § 204.5(m)(2) state, in pertinent part, that:

> *Religious occupation* means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The petitioner in this matter is a licensed and certified skilled nursing facility owned and sponsored by the [redacted] It is a non-profit Catholic facility opened in 1980 for the sole purpose of caring for elderly frail and sick members of the [redacted] religious order.

The beneficiary is a native of Brazil who last entered the United States on February 4, 1990 as a nonimmigrant visitor. The record reflects that the beneficiary has remained in the United States since such time without authorization.

In a letter dated April 10, 2001, the petitioner states that the beneficiary was hired on April 11, 1994 as a certified nursing assistant. The petitioner states that the beneficiary performs the following duties:

- Assists in the care of nursing home residents, under the direction of the nursing and medical staff.
- Answers signal lights and bells to determine residents' needs.
- Bathes and dresses and undresses residents.
- Transports residents to treatment units, using wheelchairs, or assists them to walk.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious

function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Bureau therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

On appeal, counsel for the petitioner states that:

> All members of the nursing staff (including certified nursing assistants) are required to uphold their mission to promote Catholic principles and practices. Indeed, they believe that "Each resident has the right to life as long as God wills it." Thus, the holistic approach to elderly care is first and foremost. Each resident is treated and cared for as a Child of God through the development and maintenance of a meaningful religious environment.
>
> A large majority of the Residence's employees are Catholic, as are the Residents, and the Sisters of Charity's preference would be to hire those who profess to be practicing Catholics and who are qualified. However, this is not always possible due to the prevailing nursing shortage.
>
> All those who are employed by [redacted] have agreed to apply this philosophy of care when administering to the Residents of [the petitioner]. Hence, all are screened and referenced at the time of hire and frequently evaluated on an on-going basis. Thus the lives and the well being of the Residents are not only protected but also enhanced. . . .
>
> This religious health care facility is run differently that [sic] a secular health care facility. It was

> initially established to care exclusively for the aged and infirm Sisters of Charity. In fact, today more than 25% of the Residents are Sisters of Charity. . . . 81 of the 84 residents are Catholics. . . . Out of the 115 employees, 80% are Catholics. Out of the Certified Nursing Assistants, 78% are Catholic. . . .

The petitioner has failed to establish that the duties of a certified nursing assistant constitute the duties of a religious occupation as contemplated by the regulations. First, a theological background is not a prerequisite for the position. Second, there is no inherent requirement that a person employed as a certified nursing assistant be a member of the employer's denomination or that he or she perform religious duties; the duties of the position are clearly secular in nature. Third, the duties of the position are not dependent on any religious background or prescribed theological education; and fourth, the performance of the duty is not directly related to the creed and practice of the denomination. Accordingly, it is concluded that the petitioner has failed to establish that the position of a certified nursing assistant constitutes a qualifying religious occupation within the meaning of section 101(a)(27)(C) of the Act. Therefore, the petition may not be approved.

Beyond the decision of the director, the petitioner has failed to demonstrate eligibility on other grounds.

Regulations at 8 C.F.R. § 204.5(m)(1) state, in pertinent part, that:

> All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

In this case, although the petitioner states that it has employed the beneficiary as a certified nursing assistant since 1994, the petition indicates that the beneficiary has not worked in the United States without permission. The petitioner did not provide corroborative evidence, such as the beneficiary's income tax returns, to establish that the beneficiary has been employed in a full-time salaried position during the qualifying two-year period immediately prior to the filing date of the petition.

It is further noted that no evidence of the beneficiary's qualifications as a certified nursing assistant is contained in the record of proceeding. 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).

While the determination of an individual's status or duties within a religious organization is not under the Bureau's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with the Bureau. Authority over the latter determination lies not with any ecclesiastical body but 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).

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.