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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: [redacted] Office: Nebraska 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, Nebraska Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is seeking 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 an orthodox priest at a salary of $1,500 monthly.

The director denied the petition determining that the petitioner had failed to demonstrate the ability to pay the beneficiary the proffered wage since the filing date of the petition.

On appeal, counsel for the petitioner submits a brief and additional documentation to overcome the director's decision.

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 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 petitioner is a Romanian orthodox monastery. The beneficiary is a native of the former Yugoslavia who last entered the United

States as a nonimmigrant visitor on June 24, 1996, with authorization to remain until December 10, 1996. The record reflects that the beneficiary has remained beyond his authorized period of admission in an unlawful status. The petition, Form I-360, indicates that the beneficiary has not worked in the United States without permission.

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

At issue in this proceeding is whether the petitioner has the ability to pay the beneficiary the proffered wage.

8 C.F.R. § 204.5(g)(2) states, in pertinent part, that:

> Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

The priority date of the instant petition is February 15, 2001, the date the petition was filed with the Bureau.

With the initial submission of the petition, the petitioner provided copies of a balance sheet and a statement of revenue and expenses for the year ending December 31, 2000. The balance sheet of assets and liabilities reflected a negative fund balance totaling $58,231. The statement of revenue and expenses reflected a negative balance of $35,711.

In response to the director's request for additional evidence of the petitioner's income, the petitioner provided copies of a balance sheet and a statement of revenue and expenses for the first six months of 2001. The balance sheet of assets and liabilities reflected a negative fund balance totaling $33,826. The statement of revenue and expenses reflected a negative balance of $8,268.

The financial information provided by the petitioner for 2000 and the first six months of 2001 did not include calculations on the number of individuals employed by the petitioner, their positions, or salaries.

On appeal, counsel for the petitioner submits a copy of a statement

of assets, liabilities, and equity for the month of September 2001, and a copy of a statement of revenues and expenses for the one month and nine months ending on September 30, 2001. The 2001 year-to-date information indicates a positive balance of income over operating expenses of $12,098.14. It also includes a line item for salaries, wages, and payroll taxes showing a total of $7,344.50.

On appeal, counsel asserts that the information provided clearly shows the petitioner's ability to pay the beneficiary the proffered wage of $1,500 monthly. Counsel also states that the petitioner pays for the services of the abbot of the monastery and a business manager. However, counsel does not provide information concerning the individual salaries of these two employees.

It is concluded that the petitioner has failed to credibly establish the ability to pay the beneficiary the proffered wage since the filing of the petition on February 15, 2001. Evidence contained in the record reflects that the petitioner had negative balances with regards to assets and liabilities and revenue and expenses for the first six months of 2001. Furthermore, the negative balances did not take into account the salaries of the petitioner's employees.

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). Inherently, the Service must consider that the possible rationale for the instant petition, as well as others submitted by the petitioner, is the organization's desire to assist alien members to remain in the United States for purposes other than provided for under the special immigrant religious worker provisions.

Based on the record as constituted, the petitioner has failed to establish that it has the ability to pay the beneficiary the proferred wage at the time of filing the petition. Therefore, the petition may not be approved.

Beyond the decision of the director, the petition has not sufficiently demonstrated eligibility on another ground.

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.

As the appeal will be dismissed on the ground discussed, this issue need not be examined further.

Further, 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, that burden has not been met.

ORDER: The appeal is dismissed.