U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE

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

PUBLIC COPY

[redacted]

AUG 28 2003

File: [redacted] Office: Nebraska Service Center Date:

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 monk.

The director denied the petition, finding that the petitioner had failed to establish that the beneficiary had been continuously carrying on the vocation of monk for the two-year period immediately prior to filing the petition, and had failed to demonstrate the ability to financially provide for the beneficiary's needs so that the beneficiary will not be dependent upon supplemental income for support.

On appeal, counsel for the petitioner asserts that the beneficiary has the required two years of experience in the religious vocation and two-years membership in the denomination. Counsel submits a copy of the petitioner's balance sheet for the first six months of 2001 in order to demonstrate the petitioner's ability to provide for the beneficiary's support.

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 Romania who last entered the United States as a nonimmigrant visitor on November 13, 1999, with authorization to remain until November 11, 2000. 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 been employed in the United States without Bureau permission.

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 addressed in this proceeding is whether the petitioner has established that the beneficiary has had the requisite two years of continuous experience in the proffered position.

8 C.F.R. § 204.5(m)(1) states, 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.

The petition was filed on February 15, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on the vocation of monk since at least February 15, 1999.

In support of the petition, the petitioner submitted evidence that the beneficiary was a novice monk from 1995 until he was canonically "tunctured" as a monk into the petitioning religious brotherhood on December 6, 1999. The word "tunctured" is unknown to the Bureau. It is presumed it is akin to "tonsured," meaning to shave part of the head.

On appeal, counsel submits information reaffirming that the beneficiary was a novice monk in Romania from 1995 until his arrival in the United States in November 1999. From November 1999 through December 6, 1999, the beneficiary continued to perform services as a novice monk for the petitioner. The beneficiary was subsequently accepted into the petitioner's religious brotherhood on December 6, 1999.

On appeal, counsel also submits a letter dated August 28, 2001, from Rev. [redacted] pastor of St. Helena Catholic Church in

Cleveland, Ohio, who states that:

> [a]ccording to the cannons [sic] of the church, activities for Novice Monks are essentially identical to those of other regular Monks and any Novice Monk engaged in the Novice training gains the same training and experience as the regular Monk does.

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.

Notwithstanding the statements provided on appeal that a novice monk receives the same training and experience as a regular monk, the beneficiary was not canonically "tunctured" as a monk until December 6, 1999. It is at that time that he would have made a permanent commitment to religious life. The petitioner has, therefore, failed to establish that the beneficiary was carrying on the vocation of monk for the requisite two years prior to filing the petition. For this reason, the petition may not be approved.

The second issue to be addressed in this proceeding is whether the petitioner has the ability to financially provide for the beneficiary's needs so that he will not be dependent upon supplemental income for support.

The director requested the petitioner to submit evidence of how the petitioner would compensate the beneficiary for his services, evidence of sufficient income to compensate the beneficiary, and information concerning the number of individuals currently receiving compensation from the petitioner. Counsel objected to the request as invasive and not relevant. Counsel noted that monks are not compensated for their religious work and that the petitioner has no salaried employees.

On appeal, counsel submits a copy of the petitioner's bank statement for June 2001 showing debits of $5,427.39 and credits of $5,320.76. Counsel also submits a copy of the petitioner's balance sheet for the first six months of 2001 showing a negative fund balance of $33,826.

It is concluded that the petitioner has failed to establish the ability to provide for the beneficiary's needs. The petitioner

indicates that the beneficiary has taken a vow of poverty and that the petitioner will provide the beneficiary with room, board, clothing, and other essentials. However, the financial evidence contained in the record reflects that the petitioner had a negative account balance for the first six months of 2001. Furthermore, there is no information or documentation contained in the record as to the total number of individuals the petitioner supports. There is insufficient evidence to establish that the petitioner has either adequate room or the financial means to provide the beneficiary, and all other individuals dependent upon the monastery, with board, clothing, and other essentials. For this reason as well, the petition may not be approved.

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 within 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.