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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

PUBLIC COPY

[redacted]

File: LIN 01 163 50703 Office: Nebraska Service Center Date: AUG 28 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]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 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 nun.

The director denied the petition, finding the petitioner failed to establish that the beneficiary had been continuously carrying on the vocation of nun for the two-year period immediately prior to filing the petition.

On appeal, counsel for the petitioner asserts that the beneficiary has been an approved religious worker, performing the duties of a Roman Catholic nun, since approximately December 9, 1996.[1]

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

[1] An alien with at least two years membership in a religious denomination may qualify for nonimmigrant R-1 classification under section 101(a)(15)(R) of the Act without a showing of prior work experience. For special immigrant classification under section 101(a)(27)(C) of the Act, the alien must also establish at least two years of experience in the position being offered.

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 described as a Roman Catholic mixed community of hermits of nuns, brothers, priests, and laity. The beneficiary is a native of the Philippines who last entered the United States on November 16, 1999 as an R-1 religious worker, with authorization to remain in that status until April 20, 2001.

The issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary has the requisite two years of continuous experience in the vocation of nun.

The 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.

The petition was filed on April 25, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on the vocation of nun since at least April 25, 1999.

In response to the director's request for additional documentation, counsel submitted evidence that the beneficiary took her Hermit (final) vows as a nun on April 14, 2001.

On appeal, counsel asserts that the beneficiary has been an approved religious worker in the position of Roman Catholic nun, performing the same duties, with temporary vows, from December 9, 1996. Counsel states that the petitioner believes final vows are not necessary to perform the duties of the vocation.

The regulations at 8 C.F.R. § 204.5(m)(3)(ii)(D) require a petitioner for a special immigrant religious worker to show that the alien is qualified in the religious occupation. According to 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States solely for the purpose of carrying on the religious work. To establish that the job offered is a religious occupation, a petitioner for a special immigrant religious worker must show the religious nature of the work, the religious training required to do the job, and how the alien has met the training requirements. To establish that a religious vocation is offered, a petitioner must show that the job requires the taking of vows and a permanent commitment to a religious order, and that the alien has taken the requisite vows and made the requisite commitment.

Notwithstanding the petitioner's belief that final vows are not necessary to perform the duties of the vocation, the evidence reflects that the beneficiary did not take her Hermit (final) vows as a nun until April 14, 2001; therefore, the beneficiary did not make a permanent commitment to her vocation until that date. The petitioner has, therefore, failed to establish that the beneficiary was carrying on the vocation of nun for the requisite two years prior to filing the petition. For this reason, 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.