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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]

JUL 24 2003

File: [redacted] Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary: [redacted]

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was initially denied by the Director, Vermont Service Center. In a subsequent motion to reconsider, the director affirmed his previous decision. The matter is now before the Administrative Appeals Office (AAO) on appeal. 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), in order to employ him as a certified nursing assistant.

The director denied the petition, finding that the petitioner failed to establish that the position qualifies as that of a religious worker.

On appeal, counsel asserts that the certified nursing assistant position relates to a traditional religious function. Specifically, counsel asserts that the beneficiary's main mission is to administer to the spiritual needs of the patient.

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 Revenue 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 in this matter is a tax-exempt nursing home owned and operated by the Carmelite Sisters for the Aged and Infirm, a Roman Catholic order. The petitioner wishes to employ the beneficiary as a certified nursing assistant.

The issue to be addressed in this proceeding is whether the petitioner has established that the proposed position constitutes a qualifying religious occupation for the purpose of special immigrant classification.

The term "religious occupation" is defined at 8 C.F.R. § 204.5(m)(2) as follows:

> *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.

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 the regulations. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an "activity which relates to a traditional religious function."

In this case, the petitioner described the beneficiary's duties as follows:

> 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.

After reviewing additional evidence requested by the Bureau to show that the position in question qualifies as that of a religious worker, the director found that the beneficiary's described duties do not relate to a traditional religious function. The director further determined that the duties of the position are secular in nature, even though the facility is operated by a religious organization.

On appeal, counsel states that [redacted] is run pursuant to the philosophy of the Carmelite Sisters and that the certified nursing assistants employed by [redacted] are thoroughly indoctrinated in the Philosophy of Care of the Carmelite Sisters. Counsel claims that the beneficiary's main mission is to administer to the spiritual needs of the residents while caring for them on a daily basis.

After a review of the record, it is concluded that the petitioner has not established that the position of certified nursing assistant at [redacted] constitutes a qualifying religious occupation.

The petitioner has submitted no documentation to show that the position is a traditional full-time paid position within the Roman Catholic denomination.

Counsel claims that the duties of the position relate to a traditional religious function because the beneficiary's main mission is to administer to the spiritual needs of the residents while bathing, dressing, and caring for them on a daily basis. In support of her assertion, counsel submits a copy of a document entitled "Mission Statement and Philosophy of Care," Carmelite Sisters for the Aged and Infirm, St. Teresa's Motherhouse, Germantown, New York. This document states:

> Our mission is reflected in the philosophy of care inherent in all policies and practices promulgated within the health care facilities under our supervision, thereby charging the administration, boards of directors

> and medical staff with promoting the Christian mission of healing and care.

This statement addresses the philosophy by which the individuals employed by [redacted] are to carry out their respective duties. It does not indicate that these duties are necessarily those of a religious occupation. It would not be logical to ascribe the title "religious worker" to doctors, nurses, physical therapists, dieticians, nurse's aides, or certified nursing assistants merely because the facility is operated by the Carmelite order. The activities to be performed by the beneficiary must relate to a traditional religious function. The primary if not the sole purpose of the worker must be to engage in activities directly addressing the spiritual needs of the facility's residents and only incidentally provide some health care.

In this case, the beneficiary's duties as described by the petitioner are those normally performed by certified nursing assistants in any residential care facility, whether the facility is a secular one or one owned and operated by a religious organization. While it appears that the beneficiary has received some training in the Philosophy of Care of the Carmelite Sisters, the record contains no evidence to show that the beneficiary's primary mission as a certified nursing assistant is to administer to the spiritual needs of the patient. Indeed, the petitioner's description of the beneficiary's duties makes no mention of any activities that could be described as traditional religious functions. It was held in *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988) and *Matter of Ramirez-Sanchez*, 17 I&N Dec. (BIA 1980) that the assertions of counsel do not constitute evidence.

Counsel asserts that the AAO has previously determined that the position of nurse's aide at [redacted] qualifies as a religious worker. In support of her assertion, counsel submits a copy of an AAO decision dated July 30, 1992, sustaining an appeal filed by [redacted] for a nurse's aide position. The record of proceeding, as presently constituted, does not contain a copy of the approved visa petition and its supporting documents in their entirety. It is, therefore, not possible to determine definitively whether the duties of that position are identical to those duties described in this petition. Determinations of eligibility are based on the totality of evidence available to the Bureau at this time. Furthermore, the cited decision was unpublished and, therefore, has no precedential effect in this proceeding. 8 C.F.R. § 103.3(c).

Counsel objects to the denial of this petition in view of the approval of similar petitions by the Vermont Service Center in the past. The director's decision does not indicate whether he reviewed the other nonimmigrant petitions referred to by counsel, and this record of proceeding does not contain copies of the prior petitions and their supporting documentation. If the prior petitions were approved based on evidence similar to the evidence contained in this record of proceeding, the approval of those petitions may have been erroneous. The Bureau is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals which may have been erroneous. *See e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither the Bureau nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987); cert denied 485 U.S. 1008 (1988). Moreover, the AAO is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D.La.). Accordingly, it is concluded that the petitioner has failed to establish that the offered position is a religious occupation within the meaning of 8 C.F.R. § 204.5(m)(2). For this reason, the petition must be denied.

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 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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.