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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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BCIS, AAO, 20 MASS, 3/F
Washington, D.C. 20536

[redacted]

File: [redacted] (LIN 01 167 50244) Office: Nebraska Service Center Date: MAY 16 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]

PUBLIC COPY

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 on March 21, 2002. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church. It 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 spiritual director for the Spanish community. The director determined that the petitioner had not established that the beneficiary had been shown to be qualified to engage in a religious vocation or occupation, or that the job offered was a qualifying religious occupation for the purpose of special immigrant classification.

On appeal, counsel for the petitioner argues that the Service, now the Bureau, overlooked material facts in reaching its conclusion. Additional information has been provided in support of the appeal.

The issues to be addressed in this proceeding are whether the proposed position of spiritual director qualifies as a religious occupation, and whether the beneficiary is qualified to engage in a religious vocation or occupation.

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 the 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 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;

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

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

> An alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or a bona fide organization which is affiliated with the organization described in section 501(c)(3) of the Internal Revenue Code of 1986 at the request of the organization. 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.

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

> *Religious vocation* means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.
>
> *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 janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

Regulations at 8 C.F.R. § 204.5(m)(3) state, in pertinent part, that each petition for a religious worker must be accompanied by:

> (ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:
>
> (A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.
>
> (D) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother, or that the type of work to be done relates to a traditional religious function.

The beneficiary is a 37 year-old married native and citizen of Costa Rica. The record contains a Form I-94, Arrival/Departure Record, which indicates that the beneficiary was last admitted to the United States on December 2, 1995 as a B-2 visitor with entry valid until June 01, 1996.

The record contains a letter, dated February 19, 2002, from [redacted] Archbishop Emeritus of Anchorage, Alaska, in which he is writing to the petitioner's pastor. The letter states, in pertinent part, the following:

> I have received the letter to you from [redacted] of the Immigration and Naturalization Service concerning [redacted]
>
> His request is understandable in that he is probably not aware of the developments that have taken place in the Catholic Church on ministers and ministries. The case of Ms. [redacted] is an occasion to explain this development.
>
> I should point out from the start that I am the retired Archbishop of Anchorage. However, I hold the position of Vicar General of the Archdiocese of Anchorage and, therefore, am able to speak officially. Also, at the time that Ms. [redacted] began serving in St. Mary's Parish in Kodiak I was the Archbishop and it was I who approved your plan for assigning her to be a spiritual director for the Hispanic Community and made funds available for the position. I hope, therefore, that this letter will

> serve as the requested "additional letter from an authorized official (Vicar General) of the religious organization in the United States (Archdiocese of Anchorage)...."
>
> We indeed, have a responsibility to provide such information because a government agency does not have the competence to determine a church's job description or to make an evaluation that qualifications `do not appear to require training beyond that of a devout member of the belief.'
>
> The law of the Catholic Church establishes responsibilities for formation and continued professional competence on the part of laypersons who devote themselves in a special manner to church service, whether permanent or on a temporary basis.
>
> Laypersons are here distinguished, according to the special service in the church that they perform, from the general apostolate. They need not have ecclesiastical offices as such but they may indeed be exercising such an office. The service can be related to the teaching, sanctifying, or governing functions in the church.
>
> Spiritual direction is a specialized ministry in the Catholic Church and always has been. It is associated with pastoral ministry of the priest, a part of that ministry.

The record also contains an affidavit from Father [redacted] the petitioner's pastor, in which he describes the position of spiritual director as being not unique to the Catholic Church, and that many Catholic schools and organizations offer "Spiritual Director training." The petitioner's pastor states that it is normal for the pastor of a Catholic Church to serve as the spiritual director and counselor for his parishioners.

In an affidavit from Sister [redacted] who is assigned to the petitioning entity, it is stated that the position of spiritual director is a traditional role in the Catholic Church, and that "other faiths now look to the Catholic Church to train them in spiritual direction." It is further stated that often, but not always, priests, sisters, and brothers occupy the position of spiritual director.

In a letter dated April 4, 2002, the petitioner's counsel states that the duties performed by the beneficiary "clearly require religious training." Counsel also states that the beneficiary's training with the petitioner has far exceeded 448 hours with 258 hours of specific religious training courses, and "4 years of full-

time" supervision and mentoring by nuns and the petitioner's pastor, Father Counsel further states that:

> Ms. role, to as great an extent as possible, is that of priest with respect to the Hispanic community in Kodiak. Father says job duties with respect to ministering to the Hispanic Community are the same as his job duties. Archbishop describes Ms. ministry as part of the pastoral ministry of the priest.
>
> Ms. duties go far beyond just guiding parishioners in their prayers. Fr. says that Ms. guides parishioners who come to her with spiritual problems. She also looks for signs of other issues that parishioners might be facing, although they themselves have not yet identified them. Indeed, Fr. says that, in addition to spiritual direction, Ms. provides "pastoral counseling and guidance," and "is **responsible for the spiritual formation, growth and development of the Hispanics**" in St. Mary's Parish. He explains that Ms. performs this role in many ways, including *but not limited to* leading spiritual support groups, and providing individualized counseling to parishioners. She also meets with, listens to, and provides spiritual guidance to individuals according to their needs. And then, she meets with Father to identify and discuss the spiritual needs of those Hispanics who seek guidance. Ms. also assists with religious education curriculum, sacramental preparation, eucharistic celebration, and other spiritual celebrations so they will be culturally appropriate for the Hispanic community. The job duties Ms. performs could not be more directly related to the role of the Catholic priest.
>
> Further, Father decision to place Ms. in this role is consistent with the Church today. In January of this year, a 40% decline in the number of priests over the next six to ten years was predicted. Because of these startling statistics, the church is training lay persons to fill the roles of priests and nuns as their numbers diminish. Father decision to train Ms. a lay person, to fill the role of priest with the Hispanic community is supported by the Church.
>
> The U.S. Catholic Church recognizes the tremendous need to refocus its efforts in Hispanic ministry because of the ever-growing Hispanic presence in the United States.

> To follow the edicts of the Catholic Church, Father [redacted] chose Ms. [redacted] to assist him in his role as spiritual director and pastoral guide with respect to the large Hispanic community in Kodiak. There is no basis for the Service's conclusion that Ms. [redacted] interacts "socially" with the Hispanic community. Rather, the Service completely ignores the evidence that Ms. Campos interacts with the Hispanic community.

The petitioner indicates that the beneficiary, "beginning in the fall of 1998, as a paid employee" of the petitioning entity, was "supervised by Sister [redacted] (Sister [redacted] and received training and education" in religious studies (30 hours), sacraments (24 hours), ecclesiology (24 hours), basic ecclesial community organizing (40 hours), spiritual direction (24 hours), liturgy and worship (40 hours), applied ethics and moral theology (36 hours), and advanced ESL and communication and language skills (24 hours). It is noted that the record contains no documentary evidence to demonstrate the beneficiary's participation in and completion of such training. 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).

In review of the record in its entirety, it is apparent that, in the past, the position of spiritual director has not been a permanent full-time salaried occupation within the petitioning denomination. The position of spiritual director in the Catholic Church appears to be one of the many traditional functions performed by priests and nuns. By his own admission, the petitioner's pastor, Father [redacted] states that "[n]ormally the pastor of a Catholic Church serves as the spiritual director and counselor for his parishioners." It is further apparent that the petitioner's pastor could not serve as the petitioner's spiritual director to its Hispanic members, as he does not "speak Spanish or have first hand knowledge of and familiarity with the Hispanic culture."

The beneficiary's Spanish-speaking abilities, her long standing membership with the petitioning church (since 1995) and her volunteer work as a spiritual counselor for the Hispanic community provided the petitioner with someone who could assist in serving the Hispanic community's needs. Consequently, the petitioner's pastor saw fit to create a paid position for the beneficiary within the parish, with the title of "Spiritual Director for the Hispanic Community." Nevertheless, the record fails to demonstrate that the beneficiary's activities in this position require any religious training or qualifications.

The information provided is not persuasive in establishing that the beneficiary is qualified to engage in a religious vocation or occupation. The record contains no documentary evidence that the

beneficiary has had any religious training or taken any vows. Further, the petitioner has not demonstrated that the position offered is to be filled by a salaried employee who completed training in preparation for a career in religious work. Consequently, the evidence submitted is insufficient to establish that the proposed position constitutes a religious occupation for the purpose of special immigrant classification, and that the beneficiary qualifies as a religious worker. For these reasons, the petition may not be approved.

Beyond the decision of the director, the petitioner has not demonstrated that the beneficiary had had the required continuous work experience in a qualifying religious vocation during the two-year period immediately preceding the filing date of the petition. As the appeal will be dismissed on the grounds 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 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.