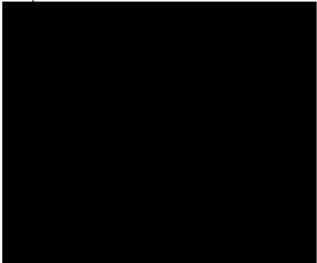


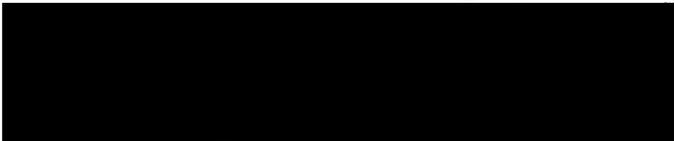
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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

ADMINISTRATIVE APPEALS OFFICE
25 Eye Street N.W.
BCIS AAO, 20 Mass, 3/F
Washington, D.C. 20536



File:

Office: VERMONT SERVICE CENTER

Date:

SEP 04 2003

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant 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:



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 employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a religious association. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4). The petitioner has not specified any job title for the beneficiary's position. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience immediately preceding the filing date of the petition, in part because unpaid volunteer work is not experience in an occupation. In addition, the director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary.

On appeal, the petitioner submits arguments from counsel and affidavits from officials in the Philippines.

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 regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that "[a]n 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 denomination which has a bona fide nonprofit religious organization in the United States.” The regulation indicates that the “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.”

8 C.F.R. § 204.5(m)(4) states that each petition for a religious worker must be accompanied by a job offer from an authorized official of the religious organization at which the alien will be employed in the United States. The official must state how the alien will be solely carrying on the religious vocation and describe the terms of payment for services or other remuneration.

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 these proceedings. The statute is silent on what constitutes a “religious occupation” and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term “traditional religious function” and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term “traditional religious function” to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In an introductory letter submitted with the petition, Father Bernabe Sison does not state a job title for the beneficiary, but states that her duties include “catechism and counseling the members; organize group prayers and other religious activities; act as facilitator of religious retreats and outreach programs within the community.”

The director requested evidence regarding the beneficiary’s qualifications and the training necessary to assume the above duties, but the petitioner did not provide such information. The petitioner provided letters attesting to the beneficiary’s prior work, but this material begs the question of what training the beneficiary had to undergo before she was qualified to do that work.

Father Gerardo D. Battad, parish priest of St. John Bosco Parish in Makati City, the Philippines, states that the beneficiary was “a ***VOLUNTEER PASTORAL WORKER*** at the St. John Bosco Parish, Makati City for a period of more than six months” (emphasis in original). Father Battad does not specify when this six-month period took place.

Father Francis Gustilo, provincial supervisor of the Salesian Society of St. John Bosco, states that the beneficiary "has been employed by the Salesiana Publishers of the Salesian North-Province from 1987-1995 in various capacities. She has been involved in the production of our Catechistical books and the Salesian Bulletin." Father Gustilo further indicates that the beneficiary was "a Salesian Cooperator, since 1996," working on Sundays at the Don Bosco Youth Center.

In denying the petition, the director stated that the beneficiary's "volunteer work as a pastoral worker does not necessarily qualify her to perform the duties of any traditional occupation. The record does not contain detailed evidence indicating the specialized religious training she has actually completed."

On appeal, counsel states that the beneficiary "fits in perfectly well for the required position because of her religious work and experience in the Philippines during her employment as a Salesian Cooperator (Third Degree of the Salesians of Don Bosco) from 1985 to 1997." The petitioner submits an affidavit from Father Jose Reinoso, rector and provincial delegate for Salesian Cooperators, attesting that "[f]rom 1994 to 1999, [the beneficiary] worked full time as a Salesian Cooperator" and that "[a] Salesian Cooperator is a lifetime vocation." If it is "a lifetime vocation" as claimed, then it is not clear why both counsel and Father Reinoso indicate that the beneficiary left that position in the late 1990s (although they differ as to the specific year).

Father Reinoso states "[b]efore becoming a Salesian Cooperator, the candidate must undergo two or more years of formation under the tutelage of ordained priests." The nature of this "formation" is not explained; it is not clear to what extent this "formation" consists of specialized training beyond the religious instruction routinely provided by clergy to their congregations.

The petitioner has not persuasively shown that the Catholic church traditionally views Salesian cooperators as paid, full-time employees of the church, rather than as dedicated lay volunteers performing a combination of religious and secular functions. In any event, the petitioner has not claimed or established that it seeks to employ the beneficiary as a Salesian cooperator.

Related to the above issue is the question of whether the beneficiary's heretofore unpaid work for the petitioner counts as qualifying experience in a religious occupation. Because the petitioner's initial letter, discussed above, lacked crucial details regarding the beneficiary's work, the director requested further information. Fr. Sison states:

As of now, we do not have full time paid religious workers. We only have unpaid volunteers. But with the membership that we now have, we can no longer rely on volunteers. We need someone who will be working with us on [a] full time basis.

As of now, [the beneficiary] is not receiving any salary as we do not wish to employ her without the necessary papers. We do not want to violate any immigration law. However, [the beneficiary] will be working with us full time, 40 hours a week, the moment her immigration papers are approved.

Asked about the beneficiary's current means of support, Fr. Sison indicates that the beneficiary "is now working with M. Weiner Exterminating Service as an office clerk." The petitioner submits documentation to support this assertion, including a pay stub and the beneficiary's tax returns in which she identifies occupation as "clerk."

The director, in denying the petition, concluded that the beneficiary is an unpaid volunteer, supporting herself as an office clerk for an exterminating service, rather than an employee of the petitioning association. Counsel, on appeal, does not address this finding.

8 C.F.R. § 204.5(m)(3) states, 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.

The petition was filed on April 26, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working in the position offered for two years immediately prior to that date. Fr. Sison states that the beneficiary has been "a volunteer religious worker in our Association since August 2000." Fr. Sison adds that the beneficiary "has been a religious worker for more than two years in the Philippines" prior to her 1999 arrival in the United States.

The director stated that the petitioner has failed to establish that the beneficiary meets the requirement of two years of continuous employment in the occupation immediately prior to the petition's filing date of April 26, 2001. Counsel, on appeal, does not address this finding.

The record indicates that the beneficiary arrived in the U.S. under a B1/B2 visitor's visa on November 30, 1999. The petitioner does not provide any information regarding the beneficiary's employment activities between her November 1999 arrival in the U.S. and the start of her work with the petitioner in August 2000. Thus, the petitioner has failed to establish that the beneficiary was continuously employed in the position offered throughout the two-year period from April 1999 to April 2001. This qualifying period is plainly defined by section 101(a)(27)(C)(iii) of the Act and 8 C.F.R. § 204.5(m)(1). No amount of employment outside of this period can compensate for this gap of over eight months from December 1, 1999 to the unspecified day before the beneficiary began working for the petitioner in August 2000.

Pursuant to the above, the petitioner has failed to establish that the beneficiary has the required two years of experience in a qualifying religious occupation immediately prior to the petition's filing date. Therefore, the petitioner has failed to establish the beneficiary's eligibility for classification as a special immigrant religious worker.



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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.