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

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



File: LIN-01-163-52731 Office: Nebraska Service Center Date: SEP 15 2003

IN RE: Petitioner: [Redacted]  
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]

**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 Citizenship and Immigration Services (CIS) 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 before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a religious organization. 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), in order to employ him as a librarian at a salary of \$10.00 per hour.

The director denied the petition on the grounds that the petitioner had failed to establish that the proposed position constituted a qualifying religious occupation for the purpose of special immigrant classification, and had failed to establish that the beneficiary had had two years of continuous experience in a religious occupation.

On appeal, the petitioner's counsel states that the beneficiary has worked over 5000 qualifying hours at the library since 1996 and that a religious school library must have a librarian that has prior religious training. The petitioner submitted additional documentation.

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 in this matter is described as a religious organization and declared that it is "home" to more than 200 churches. The beneficiary is a native and citizen of Germany who was last admitted to the United States on December 16, 1996, as an F-1 student. The beneficiary pursued an undergraduate degree at St. Sava School of Theology. The petitioner stated that the beneficiary completed his studies in July 2000. His current immigration status is unknown.

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 proposed position qualifies as a religious occupation for the purpose of special immigrant classification.

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

*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 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 Bureau 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.

The proposed position in this matter is librarian for a school of theology. On appeal, the petitioner's counsel stated that the beneficiary has been and will be working as a librarian in a religious school library, a position which requires a person with religious training and background, thereby making it a qualifying position.

In a letter dated April 23, 2001, the dean of St. Sava Serbian Orthodox School of Theology stated, in pertinent part, that:

The Serbian Orthodox Church in the USA and Canada is in urgent need of a Serbian speaking theological librarian to head our school of theology library which is a part of the Serbian Orthodox Church's School of Theology located at St. Sava Monastery in Libertyville, Illinois. This position requires the beneficiary to perform all services and to direct the school library on a permanent basis. The position requires that the candidate to be [sic] a member of the Serbian Orthodox Church, to have at least a bachelor's degree in Theology and to have at least two years of training and experience. The candidate will be required to perform, plan and recommend policies and procedures for conducting the library's programs, prepare an annual operating budget for the library and participate in the editing of the school's published journals.

Upon review of the record it is concluded that the petitioner has failed to provide a sufficient description of the duties of the position so that the Bureau could reasonably conclude that it would be a permanent salaried position or that the position is, counsel's argument notwithstanding, a traditional religious function. For this reason, the petition may not be approved.

The petitioner also must establish that the beneficiary had had the requisite two years of continuous experience in a religious occupation.

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 27, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least April 27, 1999.

In this case, the petitioner's dean in his letter dated April 23, 2001, stated that the beneficiary was a full-time student from 1996 to July 2000. The petitioner declared that the beneficiary worked part-time at the library until his graduation and for the "past six months he has worked on a volunteer basis in the position we are prepared to offer and has excelled in all areas of his duties."

As previously noted, the statute requires that the beneficiary have been continuously engaged in the religious occupation for the qualifying two-year period. The term "continuously" is not new to the context of religious workers. In 1980 the Board of Immigration Appeals determined that a minister of religion was not "continuously" carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980). This conclusion is on point with the situation found in the current proceeding.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.