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FILE:

[REDACTED]
SRC 04 056 51377

Office: TEXAS SERVICE CENTER

Date:

SEP 30 2005

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:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a subsidiary church of the Church of Scientology International. 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), to perform services as a missionary. The director determined that the petitioner had not established (1) that the beneficiary had the requisite two years of continuous work experience as a missionary immediately preceding the filing date of the petition; (2) that the beneficiary's work does not constitute a qualifying religious occupation or religious vocation; or (3) its ability to remunerate the beneficiary.

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, 2008, 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, 2008, 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 first issue we shall discuss concerns the petitioner's ability to pay the beneficiary's compensation. The regulation at 8 C.F.R. § 204.5(g)(2) requires that "[a]ny petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage." The director, in denying the petition, concluded that the petitioner has not established its ability to pay the beneficiary. The record, however, contains audited financial statements, as required by 8 C.F.R. § 204.5(g)(2), as well as detailed financial

documents showing that the petitioner has paid the beneficiary, and many other workers, an amount equal to or exceeding the minimal base pay of \$50 per week. There appears to be no dispute that the petitioner is in fact providing the beneficiary's housing, food, medical care, and the petitioner has submitted Form W-2 Wage and Tax Statements and other persuasive documentation, showing that the beneficiary has consistently received funds from the petitioner. We therefore withdraw the director's finding that the petitioner has not established its ability to pay the beneficiary's wages (or rather, allowance).

The remaining grounds – the beneficiary's past experience and the nature of the beneficiary's work – are somewhat interrelated. The regulation at 8 C.F.R. § 204.5(m)(1) 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)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on July 27, 1999.

The director has held that the beneficiary does not work in a qualifying religious occupation, as 8 C.F.R. § 204.5(m)(2) defines that term. The petitioner has held that the beneficiary is a member of a religious order, who practices a religious vocation. A finding that the beneficiary works in a religious vocation would render moot any findings regarding a religious occupation.

The regulation at 8 C.F.R. § 204.5(m)(2) defines "religious vocation" as 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.

In order to establish eligibility, the petitioner must demonstrate first that the Sea Organization is a *bona fide* religious order, and second that the beneficiary has been a full member of that order continuously throughout the two-year period immediately preceding the filing of the petition. The petitioner contends that the beneficiary is a member of the Sea Organization (Sea Org), identified as the religious order of the Church of Scientology. We have determined that the Sea Org does qualify as a religious order and that individuals who have attained full, permanent membership in the Sea Org qualify as individuals engaged in a religious vocation; the director's arguments as to why the Sea Org does not qualify as a *bona fide* religious order are not persuasive and have no apparent basis in the statute, regulations, or case law. Thus, if the petitioner credibly demonstrates that the beneficiary joined the Sea Org as a full, permanent member more than two years prior to the petition's July 27, 1999 filing date, then the petitioner shall have overcome the grounds for revocation cited in the director's decision of December 1, 2003.

The petitioner has submitted a series of affidavits, supported and corroborated by documentary evidence, to establish that joining the Sea Org involves a process of several distinct, cumulative steps. In an affidavit dated September 15, 2004, Sea Org recruitment officer Samuel Scelza states:

The process of becoming a member of the Sea Organization . . . includes the following:

- a) Application: The application procedure includes a list of basic qualifications which excludes anyone whose past history or present circumstances would make them unsuited or unsuitable to the religious life.
- b) Initial Interview: The applicant is interviewed by a Sea Org member and advised of the commitment and dedication required, and interviewed to further verify basic qualifications.
- c) Lifetime vow: The applicant signs the "Sea Org Contract," making a lifetime vow to serve the religion. This does not make the person a Sea Org member. It allows the person to enter as a novice.
- d) "Project Prepare": In most cases, the applicant works out a preparatory project of specific tasks that must be completed before he can commence his vocation. This usually involves the settling of any ongoing obligations and responsibilities. . . .
- e) Provisional status as a novice – the "Estates Project Force": The first step for every applicant when he or she arrives to begin his vocation in the Sea Org is a program called the "Estates Project Force," or "EPF." . . .
- f) Fitness Board: Before graduating from the EPF, every novice's acceptance into the Sea Org must be individually reviewed by a Fitness Board normally composed of the Chaplain and four other church executives (all Sea Org members). Any with superficial or incomplete commitment are not accepted. Any whose progress in scriptural studies is inadequate are not accepted. Those who are accepted graduate from the EPF, affirm their vows in a "swearing-in" ceremony, and commence their duties as full Sea Org members.

The sequence and form of these steps may vary slightly. . . . Regardless of the sequence, these elements will always be present.

Materials in the record indicate that a Sea Org recruit may be compared to a Roman Catholic novice who has begun preparing for entry into a religious order, and may even have been living under the conditions associated with a religious vocation, but who has not yet taken the final vows that permanently bind him or her to the order (and demonstrate that the order has found the individual worthy of this permanent commitment).

A Sea Org recruit would not face the Fitness Board unless the recruit had completed all of the earlier steps. Approval by the Fitness Board represents the transition from a Sea Org *recruit* to a Sea Org *member*. The available documents and affidavits show that it is possible for a Sea Org recruit to complete the first five steps of the process, only to fail at the Fitness Board stage. Therefore, we shall consider any alien who has completed part of the process, but who has not passed the Fitness Board, to be a Sea Org recruit rather than a Sea Org member. The distinction is important; an individual cannot accumulate two years of continuous experience in the vocation until he or she has been a full member for two years. Therefore, to be eligible for special immigrant religious worker classification as of the petition's filing date, the alien must have passed the Fitness Board no later than two years prior to that filing date.

In this instance, the petitioner has submitted evidence of the petitioner's completion of various steps in the process of joining the Sea Org, such as a copy of the beneficiary's Sea Org Contract (dated December 11, 1992) and Sea Org Application. Of greatest importance, the petitioner has submitted a copy of a Fitness Certificate, showing a finding of fitness dated July 22, 1994. This document indicates that the beneficiary had passed the final stage of admission into the Sea Org five years before the petition's July 1999 filing date. Therefore, the beneficiary was engaged in a qualifying religious vocation throughout the two-year qualifying period.

We note that the beneficiary was fifteen years old when she joined the Sea Org in 1994. By the date of filing in 1999, however, the beneficiary was twenty years old, an age that does not raise concerns about compliance with federal, state, and local laws governing child labor (such as the Fair Labor Standards Act). Such questions would likely arise in instances where the beneficiary is, as of the filing date, too young to work legally. With regard to the term "employment," an alien who works for a religious organization in exchange for room, board, and a stipend is considered to be "employed" even though there is no cash wage or salary *per se*. See *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982). We also note that the Sea Org Contract begins "I . . . DO HEREBY AGREE to enter into employment with the SEA ORGANIZATION." Thus, a given beneficiary must be able to work lawfully as of the petition's filing date; CIS is under no obligation to knowingly approve a petition, the terms of which would sanction unlawful activity by the petitioner or the beneficiary.

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 sustained that burden and, thereby, established the beneficiary's eligibility for the benefit sought. The appeal will, therefore, be sustained.

ORDER: The appeal is sustained. The petition is approved.