



U.S. Citizenship  
and Immigration  
Services

CA

[REDACTED]

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: SEP 09 2004

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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:

[REDACTED]

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.

*Mari Johnson*

Robert P. Wiemann, Director  
Administrative Appeals Office

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

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 an auditor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as an auditor immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that the position offered qualifies as a religious vocation or as a religious occupation.

On appeal, counsel mentions several petitions filed by the petitioner on behalf of various beneficiaries. Counsel submits a "motion to consolidate," and requests a single, collective adjudication of all the appeals, because they are said to hinge upon the same basic issues. There is no regulatory provision for the petitioner to file a "motion to consolidate," or for the AAO to issue a single decision covering several different beneficiaries. The AAO must consider each appeal on its own merits, although appellate decisions that cover similar issues may well contain similar, or at times identical, language.

We note that, in the "motion to consolidate," counsel states "[e]ach of these cases present identical issues," although the beneficiaries have different job titles and perform different duties for the church. Also, the grounds for denial are not identical in each proceeding. Any collective decision may, rightly or wrongly, be considered as applying to every alien worker for the Church of Scientology. The AAO has no inclination to issue a blanket declaration regarding the eligibility or ineligibility of *all* Scientology workers, and holds, instead, that some workers within that church may qualify for benefits, whereas others clearly do not.

Counsel requests that, in the event that the "motion to consolidate" is denied, the AAO should consider, in each separate decision, the brief submitted earlier in response to another denial. As noted above, the denial decisions are not identical, and neither are the records of proceeding, and therefore we reject the assertion that a single brief, originally prepared for a different alien, suffices to address the several different denial notices. We shall consider all evidence submitted in regard to this particular petition, but we need not consider arguments relating to the original petition and record for which the brief was initially prepared.

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 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 concerns the regulation at 8 C.F.R. § 204.5(m)(1), which 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 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 December 2, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an auditor throughout the two years immediately prior to that date.

Rev. [REDACTED] vice president of the petitioning entity, describes the beneficiary's past work, and intended future duties, in an affidavit: "In February 2000, [the beneficiary] decided that he would dedicate his life's work to the services of the Scientology religion and its parishioners, and took religious vows in the Church's religious order, the 'Sea Organization.' At the same time, he came to work at our Church, as an auditor. He has contiguously [sic] worked as an auditor since his arrival." In a later affidavit, Rev. Story states:

Since his arrival at our Church in February 2000, [the beneficiary's] work has been done seven days a week, and he is on call 24 hours a day depending upon need. His daily schedule is that he arrives each morning to the church at 0830 and participates in devotion for the morning period until noon. Lunch is from 1200 to 1230 followed immediately by a large meeting of all religious workers at our church, first as a group and then according to their divisions. These meetings last until 1300, whereupon [the beneficiary] then performs duties as an Auditor for the rest of the day until 2300; the evening meal is from 1730 until 1815. This schedule is consistent seven days a week except Saturday mornings for personal hygiene, and is normally a 90 hour work week not including 2 ½ hours of daily devotion or ecclesiastical training.

The director seems not to have disputed the beneficiary's presence at the petitioning entity; the record contains financial records showing that the beneficiary received a nominal allowance, typical of workers in the petitioning church. Rather, the director's findings centered on copies of numerous training certificates issued to the beneficiary, several of them during the 2000-2002 qualifying period. In denying the petition, the director noted the beneficiary's numerous training sessions and stated "time spent in training would interrupt any work time. Also regulations require that the beneficiary be qualified for the position [before the qualifying period] . . . , not be in training for the position during that time" (director's emphasis). The director also questioned whether the church had enough individuals in need of auditing to provide the beneficiary with eight hours of auditing work per day.

Counsel, on appeal, notes that these concerns were not raised in the request for evidence that preceded the denial. More importantly for our purposes, there is no support in the record for the director's assumption that the beneficiary's training interrupted the performance of his duties as an auditor. The schedule provided by

Rev. [REDACTED] indicates that training and auditing time occupied separate sections of the beneficiary's daily schedule; the beneficiary was not removed from his auditing duties for full-time training for weeks at a time.

As for the assertion that the beneficiary must not have been a qualified auditor when he entered the United States, because he continued to train after that time, this too appears to be an unfounded assumption by the director. The materials in the record indicate that training is a continuous process for church workers such as the beneficiary; the courses documented in the record appear to be intended to add to a growing skill set, rather than to establish basic competence that the beneficiary did not yet possess. The concept of "continuing education" is routinely recognized in many secular professions and occupations in the United States, in which practitioners are expected to keep pace with the state of the art in their chosen fields. Elsewhere, Ms. [REDACTED] had indicated that the beneficiary had been an auditor for years before he entered the United States. The beneficiary is not a neophyte who recently arrived in order to begin learning to be an auditor.

With respect to the question of whether the petitioner has need of a full-time auditor, we note that auditing is a function unique to the Church of Scientology, and where there is no cause for suspicion of fraudulent intent, or other grounds to question the petitioner's credibility, the church deserves some degree of deference when discussing its own rituals and traditions. If the director has articulate specific questions about the beneficiary's past or future role in the petitioning organization, the director has the opportunity to pose such questions to the petitioner via a request for evidence before rendering a decision.

The other issue concerns the nature of the beneficiary's work as an auditor. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

*Minister* means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

*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.

*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.

The director, in denying the petition, stated: "[t]he petitioner has not demonstrated that the beneficiary is pursuing a religious vocation or occupation or that the offered position is a religious vocation." The decision contains no reasoning underlying this decision, which therefore amounts to a summary declaration of ineligibility. Absent any specific grounds to contest, it is difficult (to say the least) for the petitioner to mount a meaningful appeal of such a decision.

The petitioner has argued that the beneficiary engages in a religious vocation, by virtue of his living and working conditions and his signature on a "Contract of Employment" (Contract), pledging a billion years of employment in the Sea Organization (Sea Org), identified as the "religious order" of the Church of Scientology.

The record, however, indicates that there is more to joining the Sea Org than signing the Contract. Rather, the record contains the "Code of a Sea Org Member" (Code) and the "Declaration of Religious Commitment and Membership in the Sea Organization" (Declaration), the latter of which is considerably more involved than the one-paragraph Contract. The four-page Declaration, which looks and reads like a legal contract, contains several clauses that spell out the nature of the member's obligations to the church and the Sea Org. There would appear to be no reason for this Declaration (with its detailed, legalistic wording) to exist, if one could become a Sea Org member without signing it and thus agreeing to its terms.

Also, joining a religious order typically entails a prolonged period of reflection and preparation, followed by a careful evaluation by the order to ensure that the prospective member has the requisite maturity and understanding to willingly enter into a permanent commitment.<sup>1</sup> Given this information, we find that membership in the Sea Org can amount to engaging in a religious vocation, but only if the individual has completed the entire process of initiation, including execution of the Declaration and ceremonial recitation of the Code. A signed Contract, by itself, is not *prima facie* evidence of full membership in the Sea Org.

Because the petitioner has not submitted a copy of a Declaration signed by the beneficiary, the record as it now stands does not permit the conclusion that the beneficiary engages in a religious vocation. Residence in communal Sea Org dormitories is not *prima facie* evidence of full Sea Org membership, any more than the residence of a novice monk in a monastery is proof that the novice monk has taken his final vows.

While the record does not establish that the beneficiary engages in a religious *vocation*, the separate question arises as to whether the beneficiary works in a religious *occupation*. The statute is silent on what constitutes a "religious occupation" and the regulation at 8 C.F.R. § 204.5(m)(2) 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. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

According to Rev. Story, auditing involves the use of a device called an electropsychometer or E-Meter. Rev. Story asserts that the E-meter, which "by itself does nothing," is used to detect the "minute amount of electrical energy" that, according to church doctrine, "varies or dissipates" when the person being audited

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<sup>1</sup> We note, here, that the Church of Scientology has previously brought to our attention an essay entitled "A Contemporary Ordered Religious Community: The Sea Organization," by J. Gordon Melton. The essay is available online at <http://www.cesnur.org/2001/london2001/melton.htm> and as a chapter in *New Religious Movements and Religious Liberty in America* (Derek H. Davis and Barry Hankins, eds., 2<sup>nd</sup> ed., 2003). This essay, which is not an official church publication but which the church implicitly endorsed by submitting it, describes several steps that one must take to join the Sea Org. The essay describes the Contract as "largely of symbolic import," and "actually a letter of intent" rather than a final, binding gesture of commitment. We further note that the AAO has seen copies of Contracts signed by children as young as six years of age, further evidence that there is no rigorous screening process to ensure that only the most committed church members, upon mature reflection, are permitted to sign the Contract.

“has successfully addressed – and resolved” “mental image pictures that harbor” “experiences which lie at the root of spiritual travail.” This technique is unique to Scientology, and the E-meter is something that is not used for any secular purpose, by anyone outside of the Church of Scientology. While the auditing process may, superficially, resemble the administration of a polygraph test, the motivation is religious, and the principles by which auditing is said to be effective (such as the tenet that mental images, perhaps caused by past lives, can create detectable electrical impulses) are grounded in church dogma rather than in objective science.

Viewed in this light, the practice of auditing, which does not exist outside of Scientology, appears to be a traditional religious function, and an auditor would therefore engage in a qualifying religious occupation. The fact that the auditor’s compensation takes the form of room and board rather than a salary is not inherently disqualifying; in *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982), the Board of Immigration Appeals found that an alien who “volunteered” as a religious worker in exchange for room, board, and a small stipend was, for immigration purposes, “employed” by the church.

At this point, the chief obstacle to approval of the petition appears to be the ambiguity in the nature of the petitioner’s employment of the beneficiary. If the beneficiary seeks to enter the United States in order to pursue a religious *vocation*, then he must have two years of experience in the vocation as of the petition’s filing date. It is conceivable that the beneficiary has been a full Sea Org member for two or more years, but the record contains nothing to show this. Experience in the *occupation* of an auditor is not experience in a *vocation* if the beneficiary was not already a Sea Org member at the time he earned that experience.

Conversely, if the beneficiary has no intention of executing the Declaration, or otherwise completing the preliminary commitment set forth in the Contract, then he seeks entry in a religious *occupation*, in which case his existing experience would appear to be sufficient to satisfy the experience requirement.

The above is an issue that the director must explore and attempt to resolve before issuing a new decision in this proceeding. In the event that the director renders another denial decision, such decision must be sufficiently specific to allow the petitioner an opportunity to rebut those findings.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director’s decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, regardless of the outcome, is to be certified to the Administrative Appeals Office for review.