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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: SEP 13 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:

SELF-REPRESENTED

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

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The Director, Texas Service Center, initially approved the special immigrant religious worker petition. On further review of the record, the director determined that the beneficiary was not eligible for the benefit sought and that the petition therefore had been approved in error. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and the reasons therefore, and ultimately revoked the approval of the petition on February 23, 2004. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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, or that the petitioner is able to afford the beneficiary's compensation.

On appeal, the petitioner asserts that a brief is forthcoming within 30 days. To date, over five months after the appeal was filed, the record contains no further submission, and we shall therefore consider the record of proceeding to be complete as it now stands. The appeal itself contained numerous arguments and observations, which shall receive due consideration.

The petitioner also requests oral argument. The regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, Citizenship and Immigration Services (CIS) has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. See 8 C.F.R. § 103.3(b). In this instance, counsel identified no unique factors or issues of law to be resolved that are not already covered by written materials in the record. Consequently, the request for oral argument is denied.

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 582.

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 concerns the beneficiary's past experience. 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 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 March 6, 2001. 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.

Sara Asay, a personnel officer with the petitioning entity, describes the beneficiary's past work, and intended future duties, in an affidavit: "In March 1996, [the beneficiary] joined the Sea Organization, the religious order of the Scientology religion, and in July 1997 came to work at our Church full time as an auditor. Since his arrival in 1997, he has continuously worked ministering the Church's main sacrament of auditing." The petitioner submits copies of several training certificates, one of which shows that the beneficiary was named a "Hubbard Certified Auditor" on March 9, 1999, and a "Hubbard Professional Auditor" on April 20, 1999. An earlier certificate, dated March 19, 1998, states that the beneficiary is a "Hubbard Dianetics Auditor Course Graduate." There appears to be a difference between an "auditor course graduate" and an "auditor," or else there would be little reason to add the words "course graduate" to the 1998 certificate; and if the beneficiary became an auditor in 1998, it would make little sense to issue a new certificate a year later, calling him an "auditor." The petitioner did not explain why, if the beneficiary has been an auditor since 1997, he took what appears to be a basic auditing course in 1998 and was not certified as an auditor until a year after that. Considering that the certificates make up the bulk of the very sparse documentary evidence regarding the

beneficiary's past work, it is significant that the certificates appear to conflict with the claims in Mrs. Asay's affidavit.

In the notice of intent to revoke, the director stated that the record did not contain documentary evidence or sufficient details to establish that the beneficiary worked full-time as an auditor throughout the two-year qualifying period. In response, the petitioner submits copies of canceled checks and other financial documents. These materials establish that the beneficiary was paid, but not the nature of the services by which the beneficiary earned those payments. The beneficiary states in an affidavit that he has "continuously worked at the Church on a full time basis since August 1997," but the affidavit says nothing about the beneficiary's duties. The petitioner's response to the notice of intent to revoke contains a substantial quantity of documents, but none of these materials answer the director's concerns regarding the nature of the beneficiary's duties during the qualifying period. The closest that the response comes in this regard is the assertion by the petitioner's secretary, [REDACTED], that "[a] set of photographs" depicts the beneficiary "at work; delivering a sermon; in his formal Sea Organization uniform; and as an auditor." The photographs of the beneficiary "at work" and "delivering a sermon" are virtually identical, except for the angle of the beneficiary's head; both photographs show the beneficiary standing over a large book. The photograph of the beneficiary "as an auditor" shows him standing in front of a desk in an office. The photographs do not show the beneficiary conducting any audits, let alone establish that auditing has been his exclusive activity for two years or more.

The director acknowledged that the beneficiary has worked for the petitioner, but found that "[i]t is unclear what work was done on a full-time basis; it is unclear how many hours are actually devoted [to] legal or janitorial duties, but such is clearly stated as part of the Sea Org members' duties." The director found that the petitioner has provided "little substantive evidence" to confirm "a specific description of the beneficiary's activities." While the petitioner has submitted affidavits regarding the beneficiary's work, the director noted that, pursuant to 8 C.F.R. § 103.2(b)(2)(i), affidavits are acceptable evidence only when there is no primary or secondary documentary evidence to establish the claims set forth in the affidavits. Even then, the petitioner must submit two affidavits, from individuals who are not parties to the petition. In this instance, the affidavits are generally from officials of the petitioning entity. The director observed that the individuals presenting affidavits have not specifically asserted personal knowledge of the beneficiary's activities, nor have they claimed to have consulted log books or other contemporaneous records.

On appeal, [REDACTED] asserts that the documentation in the record shows that the beneficiary has performed the duties claimed. [REDACTED] does not elaborate on this particular point, for instance by identifying the documents said to support this claim. The petitioner has merely claimed that the beneficiary has worked as an auditor, and when the director requested evidence to support this claim, the petitioner's response to the director's notice contained nothing to resolve or address this particular claim. Although the appellate submission contains detailed arguments and observations regarding other matters, there is no substantive rebuttal to the director's finding that the petitioner failed to provide verifiable documentation to establish the nature of the beneficiary's work during the two-year qualifying period. We therefore affirm the director's finding.

The next issue concerns the nature of the position offered to the beneficiary. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

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.

While the determination of an individual's status or duties within a religious organization is not under the purview of CIS, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within CIS. 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 petitioner's choice of terminology when describing its employees does not abrogate CIS' authority in this area. In the event that the petitioner's use of a given term conflicts with the regulatory definition for that term, the regulatory definition is necessarily controlling. The adjudication of an immigrant visa petition is a secular proceeding rather than an internal church matter.

The petitioner represents the beneficiary's position as a religious vocation. In support of this claim, Mrs. Asay states:

[The beneficiary] is a member of the Sea Organization. The Sea Organization is a fraternal religious organization existing within the formalized structure of the Churches of Scientology. Members of this religious order take vows of eternal service to the Scientology religion. They each sign a billion year contract, which is a document that formalizes and signifies the Sea Organization member's individual commitment to the goals, purposes and principles of the Scientology religion. . . .

Members of the Sea Organization are entrusted with the supervision of the Church and its activities. . . . Their high level of discipline and dedication sets them apart from other Scientologists and non-Sea Organization members. . . .

As is true for all members of the Sea Organization, the church will provide him with all food, clothing, transportation and health care. In addition, he will receive \$50.00 per week spending allowance.

The record contains a copy of the beneficiary's "Contract of Employment" (Contract) with the Sea Organization (Sea Org), signed and dated April 1996 (no day specified). The Contract reads, in its entirety:

I, _____ DO HEREBY AGREE to enter into employment with the SEA ORGANIZATION and, being of sound mind, do fully realize and agree to abide by its purpose which is to get ETHICS IN on this PLANET AND UNIVERSE and, fully and without reservation, subscribe to the discipline, mores and conditions of this group and pledge to abide by them.

THEREFORE, I CONTRACT MYSELF TO THE SEA ORGANIZATION FOR THE NEXT BILLION YEARS.

(As per Flag Order 232)

The petitioner contends that the beneficiary's signature on this contract establishes that he is a member of the Sea Org, and thus has taken the vows characteristic of a religious vocation.

In the notice of intent to revoke, the director stated that the petitioner has not shown that the Contract represents the permanent vows of a religious vocation, rather than simply a very ambiguous contract that fails to provide any information about the employment secured under that contract. The director also stated that the petitioner had failed to establish that the Sea Org arranges for the permanent care of its members.

In response, the petitioner submits affidavits comparing the Sea Org to Roman Catholic religious orders. [REDACTED] asserts "the documentary evidence submitted in support of [the beneficiary's] application included a sworn affidavit from [REDACTED] [sic], Adjunct Professor in Religious Studies at Washington University." The petitioner's initial submission, as it is now represented in the record, did not contain any such affidavit. A cover letter, submitted with that initial submission, lists the documents included therein, and the list does not include the affidavit. The affidavit, as quoted by [REDACTED] consists of general assertions comparing the Sea Org to Roman Catholic religious orders.

The petitioner's response contains other affidavits comparing the Sea Org to Roman Catholic religious orders, and describing the provisions that the Sea Org makes for its elderly members, such as the rental of space at local assisted living centers, as well as sections of church housing specially modified for the needs of the elderly. This affidavit answers the director's assertion that the petitioner has not shown "provision for the life-long support of its members," although we note that affidavits carry less weight than first-hand documentary evidence, pursuant to 8 C.F.R. § 103.2(b)(2)(i). The record, as a whole, indicates that Sea Org members reside more or less permanently in communal church housing, with the church providing for the members' basic needs.

The petitioner has placed considerable emphasis on the billion-year Contract with the Sea Org. Other evidence, however, indicates that joining the Sea Org entails more than signing the one-paragraph Contract. The petitioner submits a partial copy of an essay entitled "A Contemporary Ordered Religious Community: The Sea Organization," by J. Gordon Melton. The complete essay is available as a chapter in *New Religious Movements and Religious Liberty in America* (Derek H. Davis and Barry Hankins, eds., 2nd ed., 2003), and online at <http://www.cesnur.org/2001/london2001/melton.htm>. Mr. Melton states:

The process of joining the Sea Org has become somewhat institutionalized. In most instances, it begins with a public meeting in a Scientology church facility in which a Sea Org representative presents a profile of the work of the organization and invites interested attendees to consider joining. . . .

At the close of the meeting, those who express an interest in the Sea Org are invited to consider making an initial commitment in the form of signing what has come to be known as the billion-year "commitment." This brief document is actually a letter of intent of offering oneself for service in the Sea Org and to submit to its rules. . . .

After the signing of the commitment document, which is largely of symbolic import, the individual is given a period of time to consider their decision. . . . I have talked to members who waited as long as three or, in one instance, even six years before taking the next step

which is to report to the Sea Org's induction program, called the Estates Project Force (EPF).

...
The completion of the EPF program takes from two weeks to several months. . . . Included in the program is a rigorous daily routine of work and study that introduces people on an experiential level to the nature of the commitment being asked of them. . . .

Following the completion of the EPF program, the recruit makes a final decision to continue, church personnel make a final assessment of the recruit's worth to the organization, and the person is accepted into the Sea Org. If the person has not already done so, he or she now participates in a formal swearing-in ceremony that includes the reading of the "Code of a Sea Org Member," sentence-by-sentence, and his or her verbal assent to each clause. . . .

Each Sea Org member reaffirms that acceptance in a formal ceremony annually on 12 August, the anniversary of the founding of the Organization.

The above essay indicates that the billion-year Contract is largely symbolic, and that signing it does not make the signer a member of the Sea Org. Rather, the essay states that one is not a Sea Org member until after one has completed the EPF program and ceremonially read the "Code of a Sea Org Member" (Code). This statement is corroborated by the petitioner's submission of another document, the "Declaration of Religious Commitment and Membership in the Sea Organization" (Declaration), which is considerably more involved than the billion-year Contract. The Declaration contains several clauses that spell out the nature of the member's obligations to the church.¹ 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.

Given the description of the process of training and evaluation that one must undergo before the church will accept a candidate as a member of the Sea Org, and given various general similarities between the life of a Sea Org member and that of members of other religious vocations, it appears that full membership in the Sea Org, following the EPF program, reading of the Code, and execution of the Declaration, can qualify as a religious vocation. The burden is on the petitioner to establish that a given alien has completed *all* of these necessary steps. We stress that a signed billion-year Contract is *not* sufficient evidence of membership in the Sea Org, and thus is not evidence of a religious vocation, as is proved by the documentation the petitioner submitted to CIS for consideration.

In this instance, the petitioner has submitted a copy of the Declaration, signed by the beneficiary on February 16, 2002. The final paragraph of the Declaration reads, in part, "I understand that by executing this Covenant I am accepting this commitment and making a formal religious vow to serve the Church for my entire lifetime." The beneficiary's signature on this Declaration, combined with other aspects of the Sea Org already discussed,

¹ The "Declaration of Religious Commitment and Membership in the Sea Organization, a Scientology Religious Order" includes a "Pledge of Religious Commitment" which states, in part, "each Sea Organization member considers himself/herself a volunteer to create a better world, and understands that he/she is not an employee, i.e., is not entitled to receive secular benefits such as minimum wage or overtime compensation." The assertion that a Sea Org member "is not an employee" appears to conflict with the "Contract of Employment," which refers to "employment" both in its title and in the body of its text. As noted above, the essay "The Sea Organization" states that members "must . . . meet any employment laws of the land," which is another reference to "employment." The Church of Scientology is, therefore, inconsistent regarding whether or not Sea Org members are "employed" by that organization.

appears sufficient to show that the beneficiary made a permanent commitment to undertake a religious vocation as of February 16, 2002.

That being said, it is equally true that the beneficiary had not yet executed the Declaration in March 2001, when the petition was filed. It necessarily follows that the beneficiary was not yet permanently committed to a religious vocation in March 1999, when the qualifying period began. Thus, the finding that the beneficiary is *now* engaged in a qualifying religious vocation is inextricably tied to a finding that the beneficiary was *not* thus engaged during the qualifying period. Thus, the above finding establishes a fundamental ground of ineligibility *as of March 2001*. Given the available facts, the present petition cannot be approved, although this finding is without prejudice to a future petition filed on the beneficiary's behalf.

We note that the petitioner claims, on appeal, that the affidavit submitted with the initial filing indicate that the beneficiary "completed his orientation in 1997," and that the response to the notice of intent to revoke included "EPF completion certificates." We can find no such certificates in the petitioner's response, and the cover letter which describes the attached documents mentions no such certificates. The response did contain the signed Declaration, but, as we have already noted, it was not signed until long after the petition's filing date.

The director addressed the question of whether that position qualifies as a religious occupation. 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 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.

CIS 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 the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, compensated occupation within the denomination.

A detailed discussion of this issue would be moot here, because the record (including the beneficiary's signed Declaration) shows that the beneficiary seeks to work in a religious *vocation*; a finding that the beneficiary's work constitutes a religious occupation would not overcome the requirement that he must have been in the same *vocation* throughout the two-year qualifying period. We will note, however, that the practice of auditing, as described in the record, is unique to Scientology. The process involves an "electropsychometer" or "E-meter," which is a device that is not used for any secular purpose, by anyone outside of the Church of Scientology. While the auditing process may, superficially, resemble activities such as the administration of a polygraph test, the motivation is religious, and the principles by which auditing is said to be effective (for example, the tenet that mental images, caused by past lives, can create detectable electrical impulses) are grounded in church dogma rather than in objective science. Thus, the occupation of an auditor constitutes a religious occupation, provided that the auditor is not a full, permanent member of the Sea Org (in which case the individual is in a religious vocation rather than a religious occupation). An alien auditor who performed such work continuously throughout the two-year qualifying period, and who has no intention of executing the Declaration or taking the other steps necessary to join the vocation, would qualify as an alien who seeks to

enter the United States for the purpose of carrying on a religious occupation. Again, we stress that time spent in a religious *occupation* is non-qualifying for aliens who seek to enter as workers in a religious *vocation*.

The director noted that, according to church materials, “[p]arishioners of Scientology contribute financially to the support and expansion of the religion as part of their participation in auditing and training.” The director concluded that, because the beneficiary has functioned as an auditor, the beneficiary has therefore been involved in fundraising. This finding is questionable, and it seems to be comparable to the assertion that a Christian minister engages in fundraising by passing a collection plate during worship services. While a church bake sale or bingo night would certainly be a secular fundraising activity, and the sale of literature can constitute fundraising as well depending on the context, auditing (as discussed above) appears to be an irreducibly religious activity within the Church of Scientology, rather than a widely-administered scientific test that, in this case, happens to be administered by Scientologists.

The final issue 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, cited apparent discrepancies in employee lists and other documentation, and concluded that the petitioner has not established its ability to pay the beneficiary.

In rendering this decision, the director failed to consider that the petitioner has submitted an audited financial report, thus fulfilling the requirement set forth at 8 C.F.R. § 204.5(g)(2). This report indicates that the petitioner began 2001 with unrestricted net assets of nearly \$56 million, an amount that had increased to nearly \$87 million two years later. A substantial percentage of these assets are in the form of cash.

Furthermore, a memorandum from an official of CIS states: “CIS adjudicators should make a positive ability to pay determination . . . [when t]he record contains credible verifiable evidence that the petitioner . . . has paid or currently is paying the proffered wage.” Memorandum from William R. Yates, Associate Director of Operations, *Determination of Ability to Pay under 8 CFR 204.5(g)(2)* (May 4, 2004). In this instance, most of the beneficiary’s compensation is non-monetary, such as room and board. 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 canceled checks and Form W-2 Wage and Tax Statements 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 beneficiary is now a member of a religious vocation, and therefore past experience in a religious occupation (outside of the vocation) is non-qualifying. As of the filing date, the beneficiary was still a year away from joining the vocation and therefore had accumulated no qualifying experience therein. This finding is without prejudice to any future petition, filed with proper documentation and the appropriate fee, at a time when the beneficiary has accumulated two years of continuous (documented) experience in the same capacity in which he seeks future employment.

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.