



U.S. Citizenship  
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Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 22 2005  
WFO 0100151669

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.

*Maia Johnson*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition. The director rejected an appeal from that decision as untimely. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The motion will be dismissed. The matter will be remanded to the director for further consideration and action.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The director's notice of decision is dated May 20, 2005. The director received the appeal on June 27, 2005. Thus, the director rejected the appeal as untimely filed. The record shows, however, that while the decision was dated May 20, 2005, the envelope containing the decision was not postmarked until May 24 of that year. Pursuant to 8 C.F.R. § 103.5a(b), service of a notice by mail is complete upon mailing. Because the notice was not mailed until May 24, the 33-day response period did not begin until that date. The 33<sup>rd</sup> day of the response period was June 26, 2005; but this day was a Sunday. Pursuant to 8 C.F.R. § 1.1(h), the response period did not end until the next weekday that the Service Center was open for business, i.e., June 27, 2005, the day that the Service Center received the appeal.

The above discussion shows that the director received the appeal within the required filing period. This, however, does not clear the way for further adjudication of the appeal on its merits. It is not clear that a petitioner can move to reopen or reconsider a rejected appeal, because there is no "decision" to reopen or reconsider. Because it is clear that the rejection arose from Service Center error, the proper course of action would be for CIS to reopen on its own motion, pursuant to 8 C.F.R. § 103.5(a)(5).

Normally, when a proceeding is reopened, jurisdiction lies with the office that made the last decision, in this case the California Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii). Here, however, the party that filed the appeal sought appellate review. Therefore, had there been no other procedural issues, it would have been appropriate for the AAO, rather than the director, to have jurisdiction over the newly reopened proceeding, and for the AAO to review the matter on certification pursuant to 8 C.F.R. § 103.4(a)(1).

Further complicating matters, however, is confusion regarding the identity of the petitioner. Part 1 of the Form I-360 Petition is labeled "Information about the person or organization filing this petition." Part 1 shows the name of the alien beneficiary, as well as the name of the Church of Scientology. The Los Angeles address provided is that of the church. The director considered the petitioner to be the Church of Scientology, and sent the denial notice to church official [REDACTED]. Mr. [REDACTED] filed the appeal and signed the Form I-290B Notice of Appeal. A Form G-28 Notice of Entry of Appearance as Attorney or Representative indicates that [REDACTED] represents the church, and Ms. [REDACTED] has submitted materials on the church's behalf. The church, however, is not the petitioner.

Pursuant to 8 C.F.R. § 103.2(a)(1), every petition must be executed and filed in accordance with the instructions on the form. 8 C.F.R. § 103.2(a)(2) requires the petitioner to sign the petition. Here, no church official signed the Form I-360. Instead, the alien beneficiary signed the form. Thus, the alien himself took responsibility for the petition, and he, himself, must be considered to be the petitioner.

With the initial filing, the petitioner had submitted a Form G-28 indicating that attorney [REDACTED] represents the alien beneficiary. Thus, Mr. [REDACTED] rather than Ms. [REDACTED] is counsel of record. We acknowledge that the alien has, subsequently, signed a new Form G-28, indicating that [REDACTED] is his representative. There is, however, no indication that Mr. [REDACTED] is an attorney or member in good standing of any federal or state bar. Mr. [REDACTED] checked a box on Form G-28, which reads: "I am an accredited representative of the following named religious, charitable, social service, or similar organization established in the United States and which is so recognized by the Board," i.e., the Board of Immigration Appeals. The "named religious . . . organization" is identified as the Church of Scientology International. A religious organization such as a church cannot simply declare itself to be a petitioner's representative. Pursuant to 8 C.F.R. § 292.2(a), a religious organization must establish to the satisfaction of the Board that it qualifies for recognition.

There is no evidence that the church has filed a Form G-27 application for recognition with the Board, or that the Board has approved such an application. As required by 8 C.F.R. § 292.2(e), the Department of Justice publishes an alphabetical roster of Board-recognized organizations, updated quarterly. The October 25, 2005 edition of this roster, available online at <http://www.usdoj.gov/eoir/statspub/AC30405.pdf>, does not list the Church of Scientology as a Board-recognized organization. Also, the record contains no documentation to confirm that the Board has accredited Mr. [REDACTED] pursuant to 8 C.F.R. § 292.2(d), as a representative of such an organization. Therefore, we have no basis to conclude that the church is Board-authorized to represent petitioners or applicants in immigration proceedings, or that Mr. [REDACTED] is an accredited representative of any Board-recognized organization. We shall, therefore, disregard the Form G-28 in which Mr. [REDACTED] claims to be an accredited representative of a Board-recognized organization. (We reiterate, here, that the church has sought its own representation in this proceeding. Mr. [REDACTED] himself signed a Form G-28 authorizing [REDACTED] to represent the Church of Scientology.) If the petitioner (i.e., the alien beneficiary) seeks to be represented by Ms. [REDACTED] then the petitioner must submit a new Form G-28 duly executed and signed by both himself and Ms. [REDACTED].

8 C.F.R. § 103.3(a)(1)(iii) states that, for purposes of appeals, certifications, and reopening or reconsideration, "affected party" (in addition to the Citizenship and Immigration Services) means the person or entity with legal standing in a proceeding. Here, the petitioner (i.e., the alien beneficiary) is the affected party. The Church of Scientology is not an affected party in this proceeding.

8 C.F.R. § 103.3(a)(2)(v) states that an appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded. As we have already observed, neither the petitioner nor his attorney filed the appeal in this instance. The Church of Scientology, not an affected party, filed the appeal. Because the appeal has not been filed by the petitioner, nor by any entity with legal standing in the proceeding, the appeal has not been properly filed, and the director would have had to reject the appeal for that reason, regardless of when the church submitted the appeal.

For the above reasons, we must find that any appeals or motions filed by the Church of Scientology in the present proceeding must be rejected as improperly filed.

Because the director failed to recognize that the alien beneficiary is the true petitioner in this case, the director mailed the notice of decision to the Church of Scientology. We acknowledge that, in this instance, the beneficiary's mailing address is in care of that church; but the general principle stands that the director must serve notice of the decision on the petitioner himself. 8 C.F.R. § 103.5a(a)(1) states that routine service consists of mailing a copy by ordinary mail addressed to a person at his last known address. The denial notice was not addressed to the petitioner. Therefore, technically, the director has not properly served the petitioner with notice of the decision. We cannot arbitrarily consider service to a different individual at the same address to be proper service.

At the very least, the director would have to reissue the notice of decision, addressed to the affected party, and dated on the actual date of mailing rather than several days prior to mailing. There are, however, compelling reasons for the director to revisit this particular decision, rather than simply re-date and re-mail it.

The petitioner seeks classification 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), to perform services as a member of the Sea Organization (Sea Org), a religious order of the Church of Scientology. The director determined that the petitioner had not established that his position qualifies as either a religious occupation or a religious vocation.

Upon careful consideration of materials provided by the Church of Scientology, the AAO is satisfied that the Sea Org qualifies as a religious order, and that its members practice a religious vocation. Because a discussion of specific duties is germane to religious occupations, but not religious vocations, the director need not analyze the beneficiary's exact duties in any detail, so long as those duties take place within and on behalf of the tax-exempt religious organization. (An individual employed by a for-profit commercial entity would not be engaged in a religious vocation, even if that individual had taken religious vows.)

The director must now determine whether or not the beneficiary has been a full member of the Sea Org since at least two years prior to the petition's September 29, 2003 filing date, as required by section 101(a)(27)(C)(iii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(iii), and 8 C.F.R. §§ 204.5(m)(1) and (3)(ii)(A).

The record contains copies of several certificates, including a "Sea Organization Contract of Employment," which reads, in part, "I contract myself to the Sea Organization for the next billion years," signed by the beneficiary and dated July 7, 1983. The director has correctly observed that the Sea Org Contract is a symbolic document, rather than definitive proof of membership in the Sea Org.

We have incorporated into the record an affidavit from [REDACTED] a personnel officer for the Church of Scientology Flag Service Organization, who states:

The process of becoming a member of the Sea Organization is highly demanding and 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. In some cases this may take a few weeks. In other cases, it may take years.
- 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.

From materials made available to us, we have concluded that an individual who has successfully passed review by the Fitness Board can be considered a member of the Sea Organization (as opposed to a recruit, who is not a full member). Mr. [REDACTED] and other witnesses, have also indicated that church organizations generally maintain records to show when a given member passed review by the Fitness Board. Therefore, the petitioner can establish that the beneficiary possesses the relevant experience by submitting church records showing that the beneficiary passed the Fitness Board at least two years before September 29, 2003, and has continuously carried on the vocation of a Sea Org member since joining the order. Contemporaneous documents carry greater evidentiary weight than after-the-fact witness statements and affidavits.

Before issuing a new decision, the director must afford the petitioner the opportunity to submit documentation establishing that he has completed the above steps, particularly the EPF and Fitness Board. The petitioner's attendance of a training course offered by the Sea Org is not presumptive evidence of the beneficiary's membership in the Sea Org.

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 motion filed by the Church of Scientology is dismissed. 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, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.