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**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: MAR 25 2005

WAC 01 127 53336

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.

Mari Johnson

S Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California 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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is the mother church of the Church of Scientology. It seeks to classify 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), as a purported member of the Sea Organization (Sea Org), the petitioner's religious order. The director determined that the petitioner had not established: (1) the minimum qualifications for the position offered, or whether the beneficiary has met those qualifications; (2) that the position qualifies as a religious vocation, a religious occupation, or the vocation of a minister; (3) the prospective employer's financial ability to support the beneficiary; or (4) the prospective employer's qualifying status as a tax-exempt religious organization.

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Secretary of Homeland Security 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.

On appeal, counsel draws the AAO's attention to a recent opinion, *Firstland Int'l, Inc. v. Ashcroft*, 377 F.3d 127 (2d Cir. 2004), issued by the United States Court of Appeals for the Second Circuit on August 2, 2004. In that opinion, the court in *Firstland* interpreted the third and fourth sentence of section 205 of the Act, 8 U.S.C. § 1155 (2003), to render the revocation of an approved immigrant petition ineffective where the beneficiary of the petition did not receive notice of the revocation before beginning his journey to the United States. *Firstland*, 377 F.3d at 130. Counsel asserts that the reasoning of this opinion must be applied to the present matter and accordingly, CIS may not revoke the approval because the beneficiary did not receive notice of the revocation before departing for the United States, since he was already in the United States when the director issued the revocation.

According to the record of proceeding, the beneficiary lives in California; thus, this case did not arise in the Second Circuit. *Firstland* was never a binding precedent for this case. Even as a merely persuasive precedent, moreover, *Firstland* is no longer good law.

On December 17, 2004, the President signed the Intelligence Reform and Terrorism Prevention Act of 2004 (S. 2845). See Pub. L. No. 108-458, 118 Stat. 3638 (2004). Specifically relating to this matter, section 5304(c) of Public Law 108-458 amends section 205 of the Act by striking "Attorney General" and inserting "Secretary of Homeland Security" and by striking the final two sentences. Section 205 of the Act now reads: "The Secretary of Homeland Security 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 1154 of this title. Such revocation shall be effective as of the date of approval of any such petition."

Furthermore, section 5304(d) of Public Law 108-458 provides that the amendment made by section 5304(c) took effect on the date of enactment and that the amended version of section 205 applies to revocations under section 205 of the Act made before, on, or after such date. Accordingly, the amended statute specifically applies to the present matter and counsel's *Firstland* argument no longer has merit.

With regard to the merits of the petition, we turn first to the issue of the petitioner's ability to pay. The next issue concerns the petitioner's ability to compensate and support the petitioner. Glenn Briggs states, "the Church will provide [the beneficiary] with all food, clothing, transportation and health care. In addition, [the beneficiary] will receive a \$50.00 per week spending allowance." The regulation at 8 C.F.R. § 204.5(g)(2) states:

Ability of prospective employer to pay wage. Any 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 petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service.

The petitioner has submitted a letter from a financial official, stating that the petitioner employs more than 100 workers. The director must address this letter, and if it is insufficient, the director should request additional evidence of the types described in the above regulation. We note that the petitioner has submitted Forms W-2 and other pay records, showing that the beneficiary received more than the proffered wage in 2002, but significantly less in 2001. Before making any determination regarding the petitioner's ability to pay the full wage, the director should ascertain why the beneficiary received barely three-fifths of the proffered wage in 2001.

The next issue concerns the petitioner's tax-exempt status. 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

According to documentation from the Internal Revenue Service (IRS), the petitioner's tax-exempt status derives from classification under section 170(b)(1)(A)(i) of the Internal Revenue Code of 1986 (the Code), which pertains to churches and their integrated auxiliaries. This determination letter is *prima facie* evidence that the petitioner possesses the requisite status as a tax-exempt religious organization.

Documents in the record show that the petitioner registered "Golden Era Prods." as a fictitious business name, applying to a "religious film & sound studio." The director, in revoking the approval of the petition, observed that purchasers of video or audio recordings from Golden Era Productions cannot deduct the cost of those recordings from their taxes, because the purchasers receive goods in exchange for the money they provide. Therefore, the director concluded, "the very types of products produced by Golden Era Production[s] are not tax-exempt."

Tax law establishes that purchases of goods are not deductible donations, but the director has not explained how this fact invalidates the tax-exempt status of the petitioning organization. (Money spent at a church bake sale is not tax-deductible either, but this does not vitiate the church's tax exemption.) Furthermore, the record does not establish that the beneficiary actually works at Golden Era Productions. Rather, it appears that the petitioner submitted this documentation to establish a link between two different addresses used by the church: the address shown on the petition form, and the address shown on the IRS determination letter. The latter address appears on documents such as Forms W-2 issued to the beneficiary. We are satisfied that the petitioner is, and was at the time of filing, the same qualifying tax-exempt religious organization to which the IRS had issued its determination letter, and we hereby withdraw the director's finding that the petitioner has not established the required tax-exempt status.

The two remaining issues raised by the director concern the nature of the beneficiary's employment. 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.

Various statements in the record appear to portray the beneficiary as a worker in a religious occupation, a worker in a religious vocation, and a minister. The director is correct that each of these claims requires its own explanation and its own set of supporting evidence. The petitioner's strongest and most consistent claim appears to pertain to the claim that the beneficiary works in a religious vocation. Specifically, the petitioner claims that the beneficiary is a member of the Sea Organization (Sea Org), described as the religious order of the Church of Scientology. If the petitioner can demonstrate that the Sea Org is a religious order, and that the beneficiary joined the Sea Org as a full, permanent member more than two years prior to the petition's filing date, then the nature of the beneficiary's work would appear to present no obstacle to the approval of the petition. Additional information, however, is necessary in order to clarify and reconcile past assertions by various organs of the Church of Scientology.

In a letter submitted with the initial filing, Glenn Briggs, the petitioner's human resources director, states:

[The beneficiary] has been a member of the Sea Organization since 1992. The Sea Organization is a fraternal religious organization existing within the formalized structure of the Churches of Scientology. It consists of highly dedicated members of the Church. These members take vows of service. Every Sea Organization member signs a billion year contract which is a symbolic document and serves to signify an individual's commitment to the goals, purposes and principles of the Scientology religion. . . .

The Sea Organization is quite similar to religious orders found in other Churches.

We note the petitioner's assertion that the beneficiary is an ordained minister. If it is the petitioner's contention that the beneficiary seeks to work as a "minister" as defined in the regulations at 8 C.F.R. § 204.5(m)(2), then the petitioner must show that the beneficiary seeks to enter *solely* to work as a minister (i.e., not to perform any other, non-ministerial functions on behalf of the petitioner). See 8 C.F.R. §§ 204.5(m)(1) and (4).

The petitioner submits an essay entitled "A Contemporary Ordered Religious Community: The Sea Organization," by [REDACTED] published as a chapter in *New Religious Movements and Religious Liberty in America* [REDACTED] and [REDACTED], eds., 2nd ed., 2003). This essay is not an official church document, but by submitting this essay, with no disclaimers or clarifications, the Church of Scientology has effectively endorsed the statements therein. [REDACTED] 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 [sic] 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 signed the Contract, completed the EPF program, and ceremonially read the "Code of a Sea Org Member" (Code). In this instance, the petitioner's initial submission made no mention of the EPF program, and no mention of the Code.

The appeal in the present matter includes an affidavit from Neil Levin, identified as a corporate officer of the petitioning church. Mr. [REDACTED] states that joining the Sea Org entails signing the Contract; "a program to settle [one's] secular affairs"; EPF; and recitation of the Code.

The AAO conducts the final administrative review and enters the ultimate decision for Citizenship and Immigration Services on all immigration matters that fall within its jurisdiction, including special immigrant religious workers. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). In the course of its official duties, the AAO has reviewed multiple appeals for denied special immigrant visa petitions that have been filed by subdivisions of the Church of Scientology on behalf of individuals who are said to be Sea Org members. This experience leads the AAO to take administrative notice of specific inconsistencies in the petitioner's representations as to the requirements for membership in the Sea Org.

Various subsidiary branches of the Church of Scientology have, over the course of several petitions, offered inconsistent or incomplete assertions regarding the process of joining the Sea Org. In one instance (WAC 03 133 54972), the petitioner submitted a Contract signed by a six-year-old child,¹ and indicated that the individual became a member of the Sea Org at age ten (and would have become a member sooner but for "legal restrictions"). The petitioner's original statements in that proceeding referred to no other steps required to join the Sea Org.

In SRC 00 275 53346, the alien signed the Sea Org Contract at the age of fifteen, and the petitioner submitted a publication entitled "The Sea Organization: The Religious Order of the Church of Scientology," which states: "There is no age limit for joining the Sea Organization. . . . But there are restrictions for signing a

¹ The petitioner has since responded with the observation that the alien in question is now over twenty years old. The issue, however, is not how old the aliens are *now*, but rather, the conditions under which they first joined the Sea Org.

declaration or contract with the local churches. If a person is under the legal age limit of the country he must get full parental agreement and meet any employment laws of the land.” The petitioner in this cited case submitted excerpts from [REDACTED]’s aforementioned essay, indicating that the Contract is “largely symbolic” and that EPF is “the next step” to joining the Sea Org, followed by “a final decision to continue” and recitation of the Code.

In SRC 02 275 53057, the Church of Scientology originally referred to the alien’s Sea Org Contract as “a copy of [the alien’s] vows,” which suggests or implies that the Contract is the instrument of membership in the Sea Org. Nevertheless, the church later submitted an affidavit from [REDACTED] personnel officer for the Church of Scientology Flag Service Organization, which lists no fewer than six steps:

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.

We note that several steps, such as “Project Prepare,” are not mentioned in the essay by [REDACTED] previously represented as authoritative.

These repeated, and sometimes seemingly contradictory, revisions to the purported Sea Org membership requirements have made it extremely difficult for us to discern the *true* minimum requirements for membership, and impossible for us to approve any Sea Org-related petition until the issue is definitively resolved through documentary evidence (rather than unsubstantiated affidavits). Pursuant to 8 C.F.R. § 103.2(b)(2)(i), we need not accept affidavits as evidence unless the petitioner has credibly demonstrated and explained the absence of both primary and secondary documentation.

It appears that the Sea Org may well 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, but to confirm this, it has become increasingly apparent that further evidence is needed. Given the above, it is reasonable for us to require the petitioner to provide the following:

1. A demonstrably *complete* list of the steps involved in joining the Sea Organization.
2. Documentary (rather than testimonial) evidence to corroborate the accuracy of the above list.
3. A *complete* list of *all* certificates, contracts, and other documents directly relevant to the process of joining the Sea Org, that are issued to prospective members or maintained in church archives.
4. Copies of *all* such certificates issued to this particular beneficiary, as proof that the beneficiary had, in fact, completed all of the necessary steps no later than March 1, 1999.

By providing the information listed above, it will be possible to determine whether the beneficiary has in fact completed *all* of the necessary steps required to join, fully and permanently, the Sea Org. The director should instruct the petitioner to provide the above information.

We note that church doctrine derives largely, if not entirely, from the collected writings and recorded speeches of the church's late founder, [REDACTED]. If Mr. [REDACTED] left any official writings that clearly, specifically, and unambiguously describe the process of joining the Sea Org, then by all means these materials belong in the record of proceeding, along with any subsequent documentation that may demonstrate formal amendments to the process.

If the petitioner is unable to demonstrate that the Sea Org is a religious order whose members *all* qualify as practitioners of a religious vocation, then the possibility remains that *some* Sea Org members carry out religious occupations. Such decisions must be made on an individual basis. Secular duties, such as administrative or custodial duties, do not constitute a religious occupation. See 8 C.F.R. § 204.5(m)(2), which specifies that the definition of "religious occupation" does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

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.