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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

CI



FILE:



Office: CALIFORNIA SERVICE CENTER

Date: NOV 19 2005

WAC 03 261 54575

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, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a subordinate 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), to perform services as a member of the Sea Organization, a religious order of the Church of Scientology. The director determined that the petitioner had not established that the beneficiary's position qualifies as either a religious occupation or a religious vocation, or that the beneficiary had the requisite two years of continuous work experience immediately preceding the filing date of the petition.

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.

The regulation reflects that positions whose duties are primarily administrative or secular in nature do not qualify as religious occupations. Citizenship and Immigration Services 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, salaried occupation within the denomination.

In a letter dated September 14, 2003, Rev. [REDACTED] the petitioner's legal officer, describes the beneficiary's work:

As a member of [the petitioner's] core staff, the beneficiary will continue to be engaged in providing spiritual support necessary to our ongoing ability to provide spiritual care for our parishioners, including:

- Administering special liturgical duties associated with specific religious services;
- Participating in the organization of religious services;
- Providing spiritual counseling to assist others in the practice of Scientology;
- Providing advanced "auditing" services and counseling ("auditing" is a practice unique to Scientology, and is a form of one-on-one spiritual counseling);
- Participating in ongoing religious training to deepen spiritual knowledge;

- Participating in the special duties and practices of the Sea Org; and
- Providing advanced religious training for other members of the Scientology community at large.

The beneficiary will continue to leave in appropriate religious community housing provided by the church. The Beneficiary's food, clothing, medical care and transportation will be provided by the church. In addition, the Beneficiary will receive a weekly stipend of \$50.00.

Rev. [REDACTED] adds that the petitioner's staff "are all required to be members of Scientology's central religious order: the Sea Organization."

The director concluded that the petitioner did not adequately describe the beneficiary's duties, and that the petitioner has failed "to show that the Sea Organization has a governing structure, a formal legal organizing instrument, set theological education standards, or operates with its own budget and assets." The director did not explain the source of these requirements. The director acknowledged the members' "life-long commitment to their faith," but determined that there is insufficient evidence to conclude that the Sea Organization is a religious order, whose members qualify as workers in a religious vocation.

The Church of Scientology has provided various documents and affidavits discussing the Sea Organization. Upon careful consideration of these materials, the AAO is satisfied that the Sea Organization 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, we need not analyze the beneficiary's exact duties in any detail.

Having concluded that the Sea Organization is a religious order, we must now determine whether or not the beneficiary has been a full member of that order, and has continuously engaged in her religious vocation, since at least two years prior to the petition's September 18, 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 May 31, 2001.

The director requested additional evidence to establish that the beneficiary continuously carried on a religious vocation during the two-year qualifying period. The director specifically requested "evidence that shows monetary payment, such as pay stubs." Elsewhere in the same notice, the director requested copies of Form W-2 Wage and Tax Statements. Thus, the wording of the notice indicates that the requested "evidence that shows monetary payment" should be some type of documentation other than Forms W-2; otherwise, the explicit reference to Forms W-2 would have been redundant. The director, noting several arrivals and departures in the beneficiary's passport during the qualifying period, instructed the petitioner to "[p]rovide a detailed list of the beneficiary's travels outside the United States from June 2001 until the current time." The director also stated: "Each experience letter must be written by an authorized official from the specific

location at which the experience was gained. The petitioner may only write an experience letter for the experience gained at the petitioner's location."

In response, the petitioner submits copies of Form W-2 Wage and Tax Statements, showing that the petitioner paid the beneficiary \$675.98 in 2001 and \$1,894.40 in 2002. The petitioner did not submit pay stubs or comparable documentation, nor did the petitioner explain its failure to submit such evidence. With regard to the beneficiary's foreign travel, Rev. ██████ states that the beneficiary worked and resided at the petitioning facility except for brief trips to visit her family in Canada and a six-week trip to Europe on "Church business" in the spring of 2002. Rev. ██████ did not describe the "Church business," and the petitioner did not submit any documentation from any church office in Europe to verify or describe this "Church business."

The director, in denying the petition, observed that the Sea Org "Contract of Employment" is not a decisive instrument of membership in the Sea Org, and that "[t]he petitioner submitted no documentary evidence to show that the beneficiary is in fact a full member" of the Sea Organization.

On appeal, the petitioner submits materials concerning the various steps required to join the Sea Organization, such as completion of the Estates Project Force (EPF) and review by a Fitness Board. 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). 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 18, 2003 and continuously engaged in the vocation during that time.

In a supplement to the appeal, the petitioner submits copies of church documents, including a document indicating that the beneficiary passed the Fitness Board on July 11, 2001, the same day she completed "Product Zero." This indicates that the petitioner was a full member of the Sea Organization for more than two years prior to the petition's September 2003 filing date. The issue of the continuity of that work, however, remains to be addressed.

The director, in the denial notice, observed that the Forms W-2 issued to the beneficiary show amounts far lower than \$50 per week in 2001 and 2002. The director also stated: "The petitioner did not submit copies of the beneficiary's pay statements . . . as requested." Counsel, on appeal, does not directly address either of these findings, but discusses them obliquely by asserting: "The denial decision is further based on speculation and wage and hour calculations that are also not applicable in this context. . . . The CSC Director has been advised repeatedly . . . that variations may occur in the amount of their small weekly allowance." The record contains nothing from the petitioner to explain the substantial downward fluctuation in the beneficiary's allowance in 2001 and 2002. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In any event, the mere assertion that the allowance varies is insufficient to resolve the issue.

The director also observed that the petitioner had submitted nothing from any church entity in Europe to confirm that the beneficiary's six-week trip there was official church business. On appeal, counsel states: "there is no

requirement to obtain experience letters from every location at which a religious vocation has been performed.” Counsel does not, however, rebut the director’s observation that a church official in California is not in a position to attest, first-hand, to the beneficiary’s activities on another continent.

Counsel argues that the petitioner has met its burden of proof by preponderance of evidence, and therefore the director was not justified in requesting additional evidence, or in denying the petition based on the absence of that additional evidence. 8 C.F.R. § 204.5(m)(3)(iv) plainly states that, in appropriate cases, the director may request appropriate additional evidence relating to the eligibility under section 203(b)(4) of the Act of the religious organization, the alien, or the affiliated organization.

The request for evidence was fully justified under 8 C.F.R. § 103.2(b)(8), which calls for such a request if the evidence submitted either does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility. Pursuant to 8 C.F.R. § 103.2(b)(14), failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition.

Here, the director was faced with Forms W-2 showing that the beneficiary’s earnings in 2002 were substantially below the stated level. This evidence, the only contemporaneous record of payments to the beneficiary, belies counsel’s assertion that the preponderance of the evidence favors a finding of continuous work under the terms described by the petitioner.

The director determined that review of the beneficiary’s pay stubs was necessary, to establish the continuity of the beneficiary’s work. The petitioner did not provide the requested documents or explain its failure to submit them. The director also asked for detailed information regarding the purpose of the beneficiary’s foreign travel, and letters from every church site where the petitioner has worked. The petitioner responded with a letter from a church official in California, stating that the beneficiary was engaged in undescribed “Church business” at unspecified sites in Germany and Italy. No one actually in a position to witness and verify the beneficiary’s activities in Europe has provided the documentation requested. The director requested specific documentation prior to the decision, and the petitioner did not provide it at that time. Therefore, the submission of such documentation at this late stage in the proceeding would not warrant a reversal of the director’s decision. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

The petitioner has shown that the Sea Org is a religious order, and that the beneficiary joined the Sea Org more than two years prior to the filing date. The petitioner has not, however, adequately addressed the director’s valid concerns regarding the continuity of the beneficiary’s work during the two-year qualifying period, even after the director requested specific evidence to that end.

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.