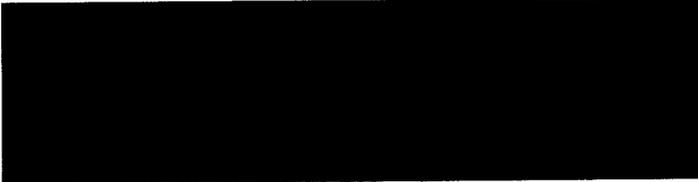


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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: NOV 23 2005
WAC 03 256 54719

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

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 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), 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 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 director also questioned the authenticity and credibility of key documents reproduced in the record.

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 6, 2003, Hilary Royce, the petitioner's legal officer, describes the beneficiary's work:

In June 1990, [the beneficiary] joined the Sea Organization and began his religious vocation at the Church of Scientology's continental office in Sydney, Australia. [The beneficiary] was responsible to assist the Churches across Australia to increase and improve their delivery of religious services to their parishioners by directing the Churches to the correct religious scriptures and Church directives to improve conditions. . . .

In July 2001, [the beneficiary] entered the United States to continue his religious vocation of assisting Churches internationally to increase their delivery of religious services to parishioners. . . .

[The petitioner] has staff qualifications requiring Sea Organization membership. . . .

Sea Organization members devote their lives to their religion; they live in community with other Sea Organization members and wear specific uniforms. Their meals, housing, clothes, medical and dental care are provided by the Church. Each member additionally receives a small weekly allowance, currently \$50.00 per week and occasional small bonuses.

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 Org 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 Org. Upon careful consideration of these materials, 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, we need not analyze the beneficiary's exact duties in any detail.

Having concluded that the Sea Org is a religious order, we must now determine whether or not the beneficiary has been a full member of that order since at least two years prior to the petition's September 12, 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 "June 1990." There is also an undated, illegible witness signature. The contract contains a separate section for signatures to show that the "Swearing In Ceremony" has taken place; the beneficiary signed under this section, but there is no recruiter's signature to verify that the oath had been administered. The director instructed the petitioner to explain this omission. In response, Ms. [REDACTED] asserts: "the original document was lost in Australia. [The beneficiary] resigned the contract with the original date that he arrived as a Sea Organization member. Signatures of the original recruiter and witnesses were not available."

In the request for evidence, issued September 19, 2003, the director instructed the petitioner to provide additional evidence of the beneficiary's work during the 2001-2003 qualifying period. The director 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, [REDACTED] asserts that the beneficiary entered the United States "on July 3, 2001 and has served the Mother Church . . . since then." The petitioner has also submitted a letter from Dr. [REDACTED] a staff dentist with the petitioning church in Los Angeles, who states that the beneficiary "has been a dental patient of mine for several years; before January 1, 2000 to the present." Dr. [REDACTED] adds that the beneficiary "has not needed or used my dental services during this time, but these services have been available for him."

The record contains a partial copy of the beneficiary's passport. Stamps in the passport indicate that the beneficiary arrived in Johannesburg, South Africa, on May 3, 2003, and departed on August 11 of that year, arriving the next day back in the United States. A Temporary Residence Permit affixed to the passport shows three categories: Visitor's Permit, Medical Permit, and Business Permit. The box "Visitor's Permit" has been checked. The form indicates "Change of purpose of entry is prohibited." Thus, the available documentation appears to indicate that the beneficiary traveled to South Africa as a tourist rather than on the official business of any employer.

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 Org. The director also noted that even the Contract is a re-creation rather than an actual contemporaneous document. The director concluded: "the fact remains that the petitioner initially submitted a document purported to be issued in 1990, when in fact it was not."

On appeal, the petitioner submits materials concerning the various steps required to join the Sea Org, 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 Org (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 12, 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 from 1992 that indicates that the beneficiary had been a Sea Org member for two years. This indicates that the beneficiary was a full member of the Sea Org for roughly 13 years prior to the petition's September 2003 filing date. The petitioner has acknowledged that the Contract reproduced in the record is a replica rather than the missing original. Given this acknowledgment, and the existence of other documents that appear to be credible, we find no serious credibility issues with respect to the Contract.

The director also noted that the beneficiary was outside the United States for more than three months in 2003 prior to the filing date; that the petitioner originally failed to disclose this lengthy absence; and that the petitioner, in Los Angeles, is not in a position to verify the nature of the beneficiary's activities in South Africa. Therefore, the director concluded, "[i]t is unknown what activities were undertaken by the beneficiary

between May 3, 2003 and August 11, 2003.” Furthermore, the director stated that Dr. [REDACTED] claim to have been the beneficiary’s dentist since “before January 1, 2000” is inconsistent with the fact that the beneficiary was in Australia until July 2001.

On appeal, the petitioner submits a new letter from Dr. [REDACTED], indicating that the earlier letter “had a mistyped date.” The new letter indicates that the beneficiary has been Dr. [REDACTED]’s patient “since July 2001.” Dr. [REDACTED] previously indicated that he never actually treated the beneficiary, so it is not clear how much actual contact, if any, Dr. [REDACTED] has had with the beneficiary. Therefore, we can afford negligible evidentiary weight to Dr. [REDACTED] letter; at best, it indicates that Dr. [REDACTED] never treated the beneficiary during the qualifying period.

The petitioner submits a copy of a payroll history printout, indicating that the church’s Flag Liaison Office issued the beneficiary’s usual \$50 allowance every week during mid-2003. The petitioner does not explain how the beneficiary, in Africa, received these payments issued in California.

The petitioner did not submit any documentation from church officials in South Africa to explain the nature of the beneficiary’s activities there, or to verify that the beneficiary had, indeed, traveled there on church business rather than for some other purpose. On appeal, counsel claims “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 in other countries. The petitioner’s continued payments of the beneficiary’s allowance do not establish that the beneficiary was on church business; they establish only that the petitioner believed the beneficiary to be on church business. What the officials in California believe the beneficiary was doing in South Africa is not, necessarily, what the beneficiary actually was doing there. We note, here, the conflicting statements from Dr. [REDACTED] described above, in light of which we need not speculate as to whether the petitioner is capable of making factually incorrect statements (inadvertently or otherwise) regarding the beneficiary’s history; the record proves this to be the case.

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.

In this instance, the director requested evidence to show what the beneficiary was doing throughout the qualifying period, and the director quite reasonably specified that this information should come from parties who are in a position to know first-hand about the activities they describe. Because the beneficiary must, by law, have continuously carried on a religious vocation, information regarding his activities is plainly material to the adjudication of the petition. No one actually in a position to witness and verify the beneficiary’s activities in South Africa (which the beneficiary entered under a “Visitor’s Permit” rather than a “Business Permit”) has

provided the documentation requested, and the petitioner has not explained its failure to submit this material evidence. 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. We note that more than two years have elapsed since the beneficiary's last absence from the United States documented in the record, and therefore the issue of the beneficiary's absences from the United States would not be an issue in a newly filed petition, provided the beneficiary has remained at the petitioning facility in California (or the petitioner is able to document and account for absences).

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. This decision is without prejudice to the filing of a new petition accompanied by the appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.