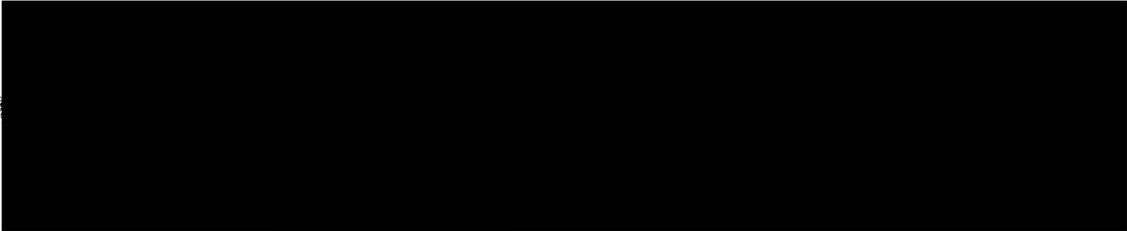


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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: NOV 23 2005
WAC 03 173 54137

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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.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), to perform services as a religious supervisor. The director determined that the petitioner had not established that the beneficiary had two years of continuous work experience in the position offered immediately preceding the filing date of the petition.

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 experience in the religious vocation, professional religious work, or other religious work. The petition was filed on May 19, 2003. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying duties throughout the two years immediately prior to that date.

The director, in denying the petition, observed that the beneficiary’s title and credentials had changed during the two-year qualifying period (for example, he was ordained as a minister on February 27, 2003), which led the director to conclude that the beneficiary had not accumulated the necessary experience in one specific religious occupation. In this regard, we must consider the nature of the beneficiary’s employment with the petitioner.

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.

The director, in discussing the petition, fails to take into account the petitioner's claim that the beneficiary is a member of the Sea Organization (Sea Org), a religious order of the Church of Scientology. In an affidavit submitted with the initial filing of the petition, Rev. Margaret Marmolejo, a legal officer with the petitioning entity, describes the beneficiary's work:

[The beneficiary] became a full time, paid staff member in September 2000 at [the petitioning entity] in Los Angeles, CA. . . .

[The beneficiary] joined the Sea Organization, a religious order within the Church of Scientology. . . .

[The beneficiary has been] a member of the Sea Organization since 1996. . . .

[The petitioner] has very rigid staff qualifications that all staff members must meet. One of these qualifications is that each staff member takes the vows of . . . the Sea Organization. . . .

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, clothing, 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 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, variations in one's duties within a religious vocation provide no defensible basis for denial of the petition. We need not analyze the beneficiary's exact duties in any detail except to acknowledge that the beneficiary must have been working for the church, and the Sea Org, continuously and exclusively during the two-year qualifying period.

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 December 15, 1996, when the beneficiary was thirteen years of age. The beneficiary's "Welcome to the Sea Org" certificate is dated August 9, 1997. Another certificate, "Basic Sea Org Member Hat," is dated November 18, 1997.

On August 11, 2003, the director issued a request for evidence, instructing the petitioner to submit additional evidence regarding the beneficiary's past work. The petitioner has submitted copies of Form W-2 Wage and Tax Statements, indicating that the petitioner paid the beneficiary \$886.25 in 2001 and \$4,337.23 in 2002. Rev. Marmolejo states that the beneficiary "has been working fulltime every week from May 19, 2001" onward, and "has been receiving \$50.00 per week, normally, with occasional small bonuses."

The period from May 19 to December 31, 2001, was 32 weeks long. At \$50 per week, the beneficiary should have received at least \$1,600 during that time, even if he received no bonuses that year. His Form W-2, however, shows barely half that amount for the entire calendar year 2001. (The beneficiary purportedly began working for the petitioner in 2000, and therefore the 2001 Form W-2 should reflect the entire year's pay, rather than the fraction of the year that falls within the qualifying period.) Rev. Marmolejo does not even mention, let alone explain, this discrepancy. If the beneficiary received less than \$900 throughout all of 2001, then the petitioner cannot credibly claim that the beneficiary "has been receiving \$50.00 per week, normally."

The director denied the petition for the reasons discussed above. 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 May 19, 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 November 27, 1997, earning a six-month provisional certification. Later documents continue to refer to the beneficiary as a Sea Org member, supporting the conclusion that the beneficiary successfully completed the provisional period. This indicates that the beneficiary joined the Sea Org well over two years prior to the petition's May 2003 filing date. It remains to be resolved whether the petitioner has credibly demonstrated that the beneficiary worked continuously during the qualifying period, as the statute and regulations require.

In denying the petition, the director noted that, as shown by the aforementioned Forms W-2, "the beneficiary earned in 2001 only 20% of his 2002 wage, [and therefore] it appears that the beneficiary did not work for the petitioner in the same capacity or for the same intensity or duration in 2001 that he did in 2002."

On appeal, counsel claims "[t]he record does not contain inconsistencies," but does not explain how it is not inconsistent to claim that the beneficiary has received \$50 per week, while his Form W-2 indicates that he received barely a third of that amount during 2001. Two different situations are consistent with the low amount on the Form W-2. Either the beneficiary's allowance was continuously paid, albeit at a reduced rate, or else the petitioner issued \$50 payments that ceased altogether for a prolonged period. The latter situation would be consistent with a major interruption in the beneficiary's work. We acknowledge the assertion that the allowance is not an hourly salary, and that this allowance may vary for whatever reason. Still, it remains that people working for the Sea Org receive this allowance, and people not working for the Sea Org do not receive it. Cessation of payments of the allowance would indicate an interruption in the continuity of the beneficiary's religious work. The petitioner must therefore provide the best available documentary evidence (such as weekly pay records) to establish that the allowance payments were not interrupted during the qualifying period, along with a credible, first-hand explanation for any reduction in those payments. The explanation should be a specific one, accounting for the particular details of this beneficiary's payments, rather than a general assertion that payments to Sea Org members vary. We note that 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). Therefore, unless counsel was personally responsible for the beneficiary's payments during 2001, statements from counsel cannot and will not suffice to resolve this discrepancy.

We reiterate that the petitioner has overcome most of the grounds for denial, and the only remaining issue concerns ambiguous evidence that suggests a possible interruption in the continuity of the beneficiary's religious work during the two-year statutory qualifying period. If the petitioner overcomes this one remaining issue, and no further issues surface in the director's review of the record, then the appropriate course of action would be for the director to approve the petition.

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, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.