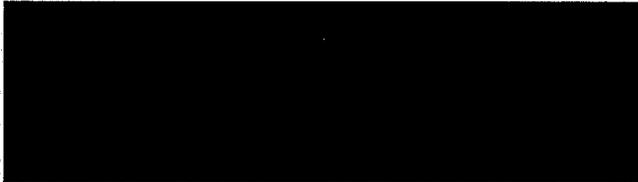


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U.S. Citizenship  
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 22 2005  
WAC 03 252 54165

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:



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.

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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.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 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 of a key document reproduced in the record.

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.

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 4, 2003, [REDACTED] the petitioner's legal officer, describes the beneficiary's work:

In 1991, [the beneficiary] began his religious training and vocation at the Church of Scientology nearest his home in Germany and became a Minister of the Church of

Scientology by training and delivering pastoral counseling to parishioners. In May 2000, [the beneficiary] joined the Sea Organization and began his religious vocation at the Church's continental office in Denmark. . . . In November 2000, [the beneficiary] entered the United States and was given the religious project of overseeing, maintaining and operating the vast communication systems between the mother Church . . . and all of the Churches around the world. . . .

[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 8, 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 19, 2000.

The contract contains lines for witness signatures, and for signatures to show that the "Swearing In Ceremony" has taken place. The beneficiary signed under both sections, but there are no witness or recruiter's signatures. Handwritten on the photocopied contract is the inscription "copy of original HR," "HR" being, presumably, the initials of [REDACTED]. The director instructed the petitioner to account for the absence of witness and recruiter signatures, and to explain why the document is in English even though the beneficiary purportedly joined the Sea Org in a non-English speaking country.

In response, Ms. [REDACTED] asserts: "the original document was lost in Germany . [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. Furthermore, the Mother Church . . . is located in Los Angeles, California and all certificates are therefore primarily available in the English language."

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 "the petitioner initially submitted a document purported to be issued in 2000, when in fact it was not." The director did not acknowledge that the petitioner had labeled the document a "copy." The director found that the petitioner had failed to submit evidence to corroborate its claims.

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 8, 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 May 28, 2000, the same day he completed "Product Zero." This indicates that the beneficiary became a full member of the Sea Org more than three years prior to the petition's September 2003 filing date. One document bears the legend "Issued at: Los Angeles, California on 25 September 2005." This demonstrates that the petitioner does, on occasion, reconstruct such certificates based on information in church records. A copy of another document, dated May 18, 2000 and recommending Fitness Board approval, appears to be contemporaneous rather than a re-creation.

We find that the beneficiary joined the Sea Org as a full member prior to the qualifying period. As noted above, the petitioner must show not only that the beneficiary joined the Sea Org more than two years before the filing date, but also that the beneficiary served continuously during that two-year period. To this end, we note that the petitioner, at the director's request, has submitted copies of Form W-2 Wage and Tax Statements showing that the petitioner paid the beneficiary \$500.80 in 2000; \$1,311.48 in 2001; and \$2,660.91 in 2002.

The director, in the denial notice, observed: "As Forms W-2 indicate the beneficiary earned in 2001 only 49% of his 2002 wage, 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 contends that the director "has been advised repeatedly . . . that variations may occur in the amount of [Sea Org members'] small weekly allowance." It remains that, in a letter submitted along with the Forms W-2, [REDACTED] has stated that the beneficiary's "remuneration is *and has been* approximately \$50.00 spending allowance weekly in addition to his food, room, transport and medical and a yearly bonus at Christmas time and again in August" (emphasis added). Given this discrepancy, it is not evident that after-the-fact statements (whether or not in the form of sworn affidavits) can suffice to resolve this issue.

Two different situations would be consistent with the low amount on the 2001 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. Also, we acknowledge that the petitioner provides food, housing, and other considerations; the allowance represents only a small fraction of the total value of the provisions made for Sea Org members. Therefore a 50% reduction in the beneficiary's allowance does not signify a 50% reduction in the petitioner's overall support for the beneficiary, nor does it necessarily imply a 50% reduction in the amount of work that the beneficiary performed for the petitioner. 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.