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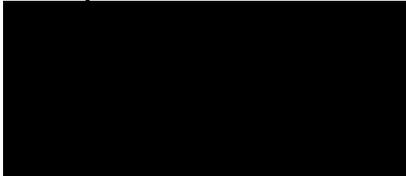
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 23 2005
WAC 03 259 53430

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.

Maiphuson

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 headquarters of the mission branch 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 petitioner's ability to compensate the beneficiary.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

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, Rev. Joi Marchant, a legal officer with the petitioning church, describes the beneficiary’s work:

In January 1997, [the beneficiary] joined the Sea Organization and began her religious vocation at the continental office of Scientology Missions International located in Moscow, Russia. [The beneficiary] was responsible for all regional and local Church of Scientology Missions across Russia to ensure that they were adhering to their license, requiring strict adherence to the religious scriptures in the delivery of religious services and training to parishioners.

In March 2000, [the beneficiary] came to the United States to further her religious vocation under Scientology Missions International at their Los Angeles headquarters. Once in Los Angeles, [the beneficiary] delivered advanced Scientology services and used her knowledge and experience to continue expanding Scientology Missions throughout Europe.

The work performed, pursuant to this religious vocation, has required a minimum of 40 hours per week, and has been the only work performed during this time.

[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 16, 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 January 31, 1997.

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.

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 16, 2003 and continuously engaged in the vocation during that time.

In a supplement to the appeal, the petitioner submits copies of church documents, reflecting Sea Org training during 1997; a favorable Fitness Board finding dated December 19, 1997; and subsequent promotions to ranks that are limited to full Sea Org members. This evidence indicates that the beneficiary was a full member of the Sea Org for more than five years prior to the petition's September 2003 filing date.

The fact that the beneficiary joined the Sea Org more than two years prior to the filing date is not, however, *prima facie* evidence that the beneficiary continuously carried on that religious vocation throughout the two-year qualifying period. Here, the director determined that the record contains evidence consistent with a significant interruption in the beneficiary's religious work.

The director, in denying the petition, questioned the continuity of the beneficiary's work. The petitioner had submitted a copy of an I-797A Notice of Action, indicating that an R-1 nonimmigrant visa had been approved, allowing the beneficiary to perform religious work not for the petitioner, but for the Church of Scientology Western United States (CoSWUS), from July 2, 2002 to July 2, 2004. Form W-2 Wage and Tax Statements indicate that the CoSWUS paid the beneficiary \$62.50 in 2000, \$641.66 in 2001, and \$506.39 in 2002. The Forms W-2 show that the CoSWUS is located at a different address than the petitioning

organization. The space on the 2000 and 2001 forms for the beneficiary's address is blank. The 2002 form shows the beneficiary's address as [REDACTED] which is also the address of the CoSWUS.

The director noted that the amounts reflected on Forms W-2 show that the beneficiary clearly did not receive \$50 per week in 2000, 2001 or 2002. The director also observed that the Forms W-2 and the R-1 approval notice indicate that the beneficiary worked not for the petitioner, but for the CoSWUS, which is a separately incorporated entity at a different address. Thus, the director concluded, the evidence indicates that the beneficiary did not work for the petitioner at all during the two-year qualifying period, and it does not indicate that the beneficiary's work for the CoSWUS was continuous.

On appeal, the petitioner submits a letter from Rev. Marchant, who states:

Scientology Missions International (SMI) is the mother church to all Missions of the Scientology religion, planet-wide. In order to carry out its functions, SMI has established representative branch units in continental locations, usually connected with already established Continental churches of Scientology.

Thus there is a SMI CIS (Commonwealth of Independent States) located in Moscow as part of the CIS Continental Church management branch and a SMI WUS (Western United States) established as part of the Continental Organization in Los Angeles known as Church of Scientology, Western United States.

[The beneficiary] began her Sea Org duties in SMI CIS, and in May 2000 she did a specific program of training and personal enhancement at Church of Scientology, Western United States. During that time she received her allowance from Church of Scientology Western United States. However, the intention, which was later carried out, was for [the beneficiary] to take up duties as an international consultant for Missions and Missionaries throughout the CIS and other European countries as a part of the Mother Church for Missions, SMI International.

[The beneficiary] did accomplish what was set out for her in training and enhancement, and arrived in SMI International in February of 2003.

Rev. Marchant's explanation, above, is not consistent with her previous letter on the beneficiary's behalf. In the earlier letter, Rev. Marchant stated: "In March 2000, [the beneficiary] came to the United States to further her religious vocation under Scientology Missions International at their Los Angeles headquarters. Once in Los Angeles, [the beneficiary] delivered advanced Scientology services. . . . The work performed . . . has been the only work performed during this period of time." The petitioner's Los Angeles headquarters are located at [REDACTED]. The CoSWUS is located at [REDACTED]. Rev. [REDACTED] in her initial letter, did not mention the CoSWUS or that the beneficiary was residing at that facility instead of at the petitioning facility. Also, she initially stated that the beneficiary's "only work performed during" the qualifying period was "deliver[ing] advanced Scientology services." A December 15, 2003 letter from Rev. Marchant, submitted in response to the director's request for information prior to the denial, does not mention the CoSWUS or training at all. Only when confronted with conflicts within the petitioner's own evidence did Rev. Marchant

see fit to claim that the beneficiary spent the majority of the qualifying period in a “program of training and personal enhancement” that lasted nearly three years, from May 2000 to February 2003.

The petitioner had also submitted a December 11, 2003 letter from Anthony Penketh, the petitioner’s director of personnel establishment. Mr. Penketh states that the beneficiary “resides in a church apartment along with other church staff. . . . These services have been provided for [the beneficiary] from September 16, 2001 through September 16, 2003.”

As noted above, the petitioner and the CoSWUS are two separately incorporated legal entities. Rev. Marchant states that the CoSWUS was responsible for the beneficiary’s allowance during the time she was at the CoSWUS. Thus, even if the petitioner had originally been responsible for paying that allowance (which has not been shown), the petitioner does not now claim to have continued to pay it after the beneficiary was at a different church.

Having established that a given church of Scientology pays allowances to Sea Org members only when those members are at that particular church, we return to the issue of the amounts shown on the three Forms W-2 from the CoSWUS. As the director has observed, the Forms W-2 do not show amounts anywhere near \$2,600 per year, which is what would be expected if the CoSWUS paid the beneficiary \$50 per week. In her December 15, 2003 letter, Rev. Marchant did not state that the beneficiary’s allowance had been reduced at any time. Rather, she stated that the beneficiary’s “remuneration is *and has been* approximately \$50.00 spending allowance weekly . . . and a yearly bonus at Christmas time and again in August” (emphasis added). This assertion as to what the beneficiary’s “remuneration . . . has been” is utterly inconsistent with the information on the Forms W-2, which show only \$1,210.55 paid over the course of three years – less than half of what the beneficiary should have received in a single year, even without factoring in the twice-annual bonuses that, according to Rev. Marchant, the beneficiary “has been” receiving.

We acknowledge that the “allowance” is not an hourly wage or salary. The issue is not over payment of an hourly wage; the issue is the obvious contradiction between the claim that the beneficiary “has been” receiving \$50 per week, and Forms W-2 showing that the beneficiary has received less than a fourth of that amount. This contradiction raises obvious concerns regarding the credibility of Rev. Marchant’s unsupported claims, and yet another letter from the same source does not and cannot dispel those concerns. Anthony Penketh’s letter, indicating that the petitioner has been responsible for the beneficiary’s maintenance without interruption, is not consistent with other evidence indicating that the beneficiary was at an entirely separate church facility for most of the qualifying period. Doubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988).

The record contains nothing from anyone at the CoSWUS to verify the nature or extent of the beneficiary’s activities there, nor any weekly payroll records from the CoSWUS to settle the question of whether the beneficiary steadily received greatly reduced payments, or whether the beneficiary only received a small number of allowance payments due to significant interruptions in activity at the CoSWUS. Neither Rev. Marchant nor

anyone else at the petitioning church is a CoSWUS official with authority to speak on behalf of CoSWUS or to verify, first-hand, what the beneficiary was doing at CoSWUS or whether there were any major interruptions in that work.

The remaining issue concerns the petitioner's ability to compensate the beneficiary. 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 bulk of the beneficiary's compensation is non-monetary, in the form of room, board, medical care and so on; the petitioner has also indicated that the beneficiary "will receive a \$50.00 per week spending allowance." We stress that the above statement by Rev. Marchant does not indicate that the allowance may fluctuate downward; rather, she states that the beneficiary "will," not "may" or "might" or "should," "receive a \$50.00 per week spending allowance." We also acknowledge that this spending allowance is in addition to the beneficiary's basic subsistence needs.

The petitioner's initial submission contained no financial documentation. Subsequent to a request for evidence, the petitioner has submitted unaudited financial statements for 2000 and 2001, compiled by an accountant within the church. The statements indicate over \$1.5 million in unrestricted net assets each year. Expenses include between \$40,000 and \$60,000 in "salaries and wages." Rev. Marchant asserts that the petitioner has "30 staff members," indicating that each staff member received, on average, \$1,365 in 2000 and \$1,916 in 2001. The petitioner also listed expenses for "staff welfare and other employee benefits." The assertion that the petitioner has 30 staff members also indicates that the petitioner cannot avail itself of the regulatory clause pertaining to employers with 100 or more employees.

Besides being unaudited, the above documents represent the petitioner's financial situation as of December 31, 2001, nearly two years before the petition was filed. 8 C.F.R. § 204.5(g)(2) requires the petitioner to establish its financial situation from the filing date forward.

As discussed above, the Forms W-2 in the record show payments drastically below the offered amount, and even then those payments originated from a different church. Thus, the Forms W-2 cannot even partially support a finding that the petitioner is and has been able to compensate the beneficiary.

The director, in the denial notice, cited the pertinent regulations and found that the petitioner's unaudited documents from 2000 and 2001 could not suffice to establish ability to pay from September 2003 onward. On appeal, the petitioner submits no further financial documentation.

Counsel argues that "[r]emuneration requirements for a religious worker at 8 C.F.R. § 204.5(m)(4) are distinct from the other employment-based categories which specifically require an 'offer of employment.'" The regulation at 8 C.F.R. § 204.5(m)(4) does not establish a separate remuneration standard or otherwise supersede 8 C.F.R. § 204.5(g)(2). It simply states that the religious organization must explain "terms of payment for services or other remuneration." Furthermore, we hold that special immigrant religious worker petitioner require an "offer of employment." Compensated religious work constitutes "employment" for immigration purposes, even if the compensation is in the form of material support rather than a cash wage or salary. See *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982).

The above-cited regulation at 8 C.F.R. § 204.5(g)(2) states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely 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.