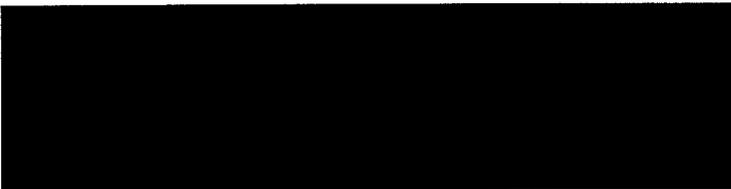


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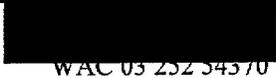
U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: NOV 10 2005

WAC 03 252 54370

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

R 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 on appeal. The director's decision will be withdrawn and the matter will be remanded for further consideration and action.

The petitioner is the mother church of the Church of Scientology International. 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 director also cited questions of credibility that arise from apparent discrepancies in the beneficiary's documentation.

First, we shall discuss the issue of whether the beneficiary seeks to work in a religious occupation or a religious vocation. 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 4, 2003, [REDACTED] the petitioner's legal officer, describes the beneficiary's work:

[I]n Denmark at the continental Church . . . [the beneficiary] was responsible for the application and adherence to the religious scriptures by the staff and parishioners of the Churches across Europe so that they could each make the most possible gains from their religious counseling and training. In September 2000, [the beneficiary] was promoted and entered the United States, and resumed his religious vocation at [the petitioning church] and

is responsible for the adherence to the religious scriptures of the Church, by staff and parishioners of churches internationally. . . .

[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 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 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 August 25, 1990. The contract contains a section for signatures to show that the "Swearing In Ceremony" has taken place; this section is blank. On the contract, the beneficiary wrote his surname as [REDACTED]. That same surname appears on every other church-issued certificate in the record. On the beneficiary's R-1 nonimmigrant religious worker visa, issued September 5, 2000, and a related Form I-94 Departure Record, the beneficiary's surname is stated as [REDACTED].

On September 23, 2003, the director instructed the petitioner to explain the blank spaces relating to the "Swearing In Ceremony" on the beneficiary's contract, and the variations in the beneficiary's name. The director also instructed the petitioner to submit the beneficiary's original contract, and further evidence of the beneficiary's work history during the qualifying period. In response, [REDACTED] states "the original Contract of Employment signed in 1990 was lost and is not available." [REDACTED] asserts that the photocopied version in the record is a later re-creation of the document, which the beneficiary "re-signed . . . with the original date." With regard to the beneficiary's surname, [REDACTED] claims that the beneficiary's

“family name was [REDACTED] from . . . 1960 up until December 1996, when it was changed to [REDACTED] [REDACTED] after he was officially and legally adopted by his godmother.” [REDACTED] asserts that the adoption was later canceled, “and in 2002, his surname was returned to the original family name of Moschopoulos.” The petitioner submits a copy of a letter dated August 22, 2003, from [REDACTED] of the Greek Consulate General in Los Angeles, confirming the name change “according to the Decision of the Prefect of Athens with Protocol Number [REDACTED].”

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. The director also observed that several church certificates purportedly issued to the beneficiary during the late 1990s show the beneficiary’s surname as [REDACTED] even though the petitioner has stipulated that the beneficiary’s legal name was [REDACTED] or [REDACTED] at that time.

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 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 September 28, 1990, the same day he completed “Product Zero.” This indicates that the petitioner was a full member of the Sea Organization for more than a decade prior to the petition’s September 2003 filing date. The document also states “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.

The petitioner, on appeal, does not address the director’s concerns regarding the beneficiary’s surname as it appears on documents issued in the late 1990s. Indeed, one of the newly submitted documents, a photocopy of an “Application for Rank or Rating Promotion” dated July 18, 1998, states the beneficiary’s surname as [REDACTED] instead of [REDACTED]. There is no indication that this document has been reconstructed from church records; rather, it has every appearance of an original document from 1998.

Overall, the Fitness Board documentation and other materials appear to be credible, which would support a finding that the beneficiary joined the Sea Org more than two years before the filing date, and there is no evidence in the record to indicate that the beneficiary worked anywhere but in the Sea Org during the two-year qualifying period from September 2001 to September 2003.

Because the petitioner has overcome the articulated grounds for denial, the director’s decision cannot stand. At the same time, credibility issues remain, as explained above. While the director noted these credibility issues in the denial notice, the director did not articulate these concerns into a coherent basis for denial. Therefore, the

director must issue a new decision, taking into account the AAO's findings. If the director believes that the discrepancies regarding the beneficiary's surname warrant denial of the petition, then the director must allow the petitioner a final opportunity to resolve these discrepancies. If the petitioner does not overcome these concerns, then the director must issue a new decision in which the discrepancies are clearly tied to a defensible basis for denial, rather than expressed as general misgivings as in the first decision.

We note that the regulations provide for situations in which the director has serious reservations about the authenticity or reliability of a copy of a document. 8 C.F.R. § 103(b)(5) gives the director the discretion to request the *original* documents when copies are disputed. By signing the Form I-360 petition, the petitioner has agreed, under penalty of perjury, to provide any information that the director deems necessary for the adjudication of the petition. If a given petitioner refuses to provide original documents that are material to the proceeding, then the director can deny the petition pursuant to 8 C.F.R. §§ 103.2(b)(5) and (14). We note that 8 C.F.R. § 103.2(b)(5) requires that, if a petitioner does not provide original documents to substantiate a previously submitted copy, the petition shall be denied; there shall be no appeal; and the petition cannot be reopened at a later date based on the subsequent availability of the requested original. That same regulation also requires the director to return the requested original documents after the petition has been adjudicated; the director shall not be permitted to retain the original records indefinitely. The director should exercise this prerogative, if the director believes the issue of the beneficiary's surname to be material to the outcome of the proceeding.

In such an event, the director should request primary documentation of the claimed 1996 adoption, including court documents or other official records of the adoption and its subsequent dissolution, as well as a full explanation from the beneficiary and, if possible, other involved parties concerning the circumstances under which the unidentified godmother adopted a 36-year-old man, who in turn used an amended name on immigration documents but not church documents before dissolving the adoption.

We believe it prudent also to advise the petitioner that, from this point forward, any and every document that is reconstructed or re-created from church records should be identified as such upon the first submission of that document, rather than claiming such reconstruction or re-creation after the fact once Citizenship and Immigration Services (CIS) has observed discrepancies in a given document. Also, where possible, copies of the actual church records from which the re-creation is derived should also be provided; CIS reserves its regulatory prerogative to request the original records for temporary review. Full compliance will aid in the conclusion that contemporaneous records do, in fact, exist as claimed, and that the petitioner is not merely creating new documents to create the appearance of the beneficiary's past history with the church and/or the Sea Org.

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.