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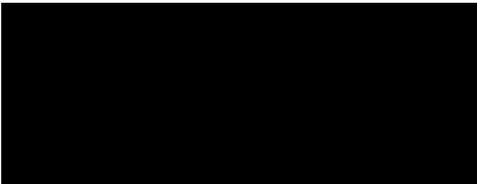


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: 8/13/05
WAC 03 250 54092

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.

Mari Johnson

S 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 before the petition's filing date.

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 3, 2003, personnel officer [REDACTED] states:

[The beneficiary] became a Scientologist in 1975 and he joined Church staff in Milano Italy. In October 1978 [the beneficiary] became a Sea Organization Member and worked in various Churches of Scientology around the world. Then in June 2000, [the beneficiary] came to Los Angeles to work at [the petitioning church] where he took a position that oversees the proper application of certain Church scriptures in a particular area. . . .

[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 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, continuously practicing a religious vocation, since at least two years prior to the petition's September 5, 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 April 15, 1977. The director, in denying the petition, observed that the "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 5, 2003 and continuously engaged in the vocation during that time.

In a supplement to the appeal, the petitioner submits copies of church documents. There is no contemporaneous record from the Fitness Board, but there is documentation showing that promotions within the Sea Org are available only to full members (rather than recruits). An Application for Rank or Rating Promotion, dated July 18, 1999, states that the beneficiary has been in the Sea Org for 15 years (implying that the beneficiary joined the

Sea Org in 1984, seven years after he signed the Contract and six years after [REDACTED] claimed the beneficiary became a Sea Org member). While this is not documentation of his initial entry into the Sea Org, it nevertheless indicates that the beneficiary was, by 1999, a full member eligible to apply for promotion. This indicates that the beneficiary was a full member of the Sea Org for more than four years prior to the petition's September 2003 filing date. (If the required two years are established, the exact date that the beneficiary joined the Sea Org is irrelevant for purposes of demonstrating eligibility.)

The petitioner has, thus, established that the beneficiary joined the Sea Org before the qualifying period. Continuity of service, however, is another requirement that the petitioner must meet. With this in mind, on September 30, 2003, the director instructed the petitioner to submit "evidence of the beneficiary's work history beginning September 5, 2001 and ending September 5, 2003," along with pay stubs and other documentation as well as a complete history of the beneficiary's work for the church, including "specific locations" where the work took place. The director also requested "experience letters written by the previous and/or current employers." The director specified "[e]ach 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, the petitioner has submitted a letter from [REDACTED] a legal officer for the petitioning organization. [REDACTED] states: "in September 2001 [the beneficiary] went to Italy for three days and went to France for about three and one-half months and did missionary work there on behalf of the Mother Church; in April 2003 [the beneficiary] went to Mexico City for one month and did missionary work there on behalf of the Mother Church." [REDACTED] asserts that, otherwise, the beneficiary has been based in Los Angeles throughout the 2001-2003 qualifying period. We note that, on the Form I-360 petition, the petitioner indicated that the beneficiary had entered the United States on June 10, 2000, but the petitioner did not specify whether or not that was the beneficiary's most recent entry. Stamps in the beneficiary's passport corroborate the dates of the beneficiary's absences from the United States.

The petitioner has also submitted a printout of payroll records, showing payments to the beneficiary from 2000 onward. Some weeks (such as the second week of June 2001 and the first and third weeks of September 2001) show no payments. During many weeks in mid-2001, the beneficiary received considerably less than \$50 per week; several payments were for \$16.25, with the lowest being for \$11.50. After 2001, the beneficiary's payments have typically been \$65 per week. There are no lengthy interruptions in the beneficiary's payments to coincide with his travel abroad, although it is not clear how these payments were disbursed to the beneficiary if the beneficiary was not in the United States to collect them.

The petitioner did not submit any documentation from church officials in France or Mexico to explain the nature of the beneficiary's activities there, or to verify that the beneficiary had, indeed, traveled to those countries on church business. The director, in the denial notice, observed that the petitioner "did not submit experience letters written by supervisors or managers in France or Mexico who are in a position to verify the duties performed and hours worked" by the beneficiary. 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. What the officials in California believe the beneficiary was

doing in France and Mexico is not, necessarily, what the beneficiary actually was doing there. 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. We repeat, here, that the petitioner originally claimed that the beneficiary joined the Sea Org in 1978, but documentation from 1999 states that the beneficiary had been a member for only 15 years. Therefore, 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 from parties in a position to know first-hand what the beneficiary was doing in France and Mexico during several months of the qualifying period. 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 France or Mexico 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.