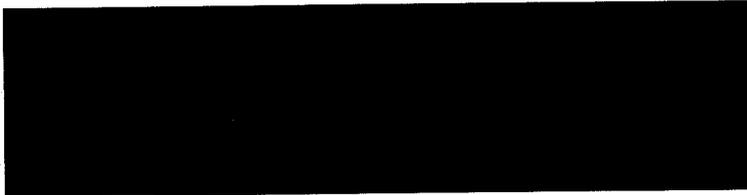


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U.S. Citizenship
and Immigration
Services



CI

FILE: WAC 04 236 52511 Office: CALIFORNIA SERVICE CENTER Date: NOV 23 2005

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:

SELF-REPRESENTED

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 appeal will be dismissed.

The petitioner is a daughter 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 "in the position of [REDACTED]". 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 will not be dependent on supplemental employment or solicitation of funds for support. The director also found that the petitioner had not submitted acceptable evidence of its ability to pay the beneficiary's wage.

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 August 25, 2004, [REDACTED] president of the petitioning church, describes the beneficiary's work:

[The beneficiary] has had full time employment with us for over 3 years now. We are offering to continue her full time employment in the position of [REDACTED] Communicator. This is an ecclesiastical position within the Church. The duties are to ensure that the Scriptures of our Founder, [REDACTED] are known to all staff and parishioners and applied precisely. . . [REDACTED] set forth the Scientology theology and technologies in more than 500,000 pages of writings and over 2,000 tape-recorded public lectures. It is therefore a large and highly responsible position to be the [REDACTED] Communicator.

...

[The beneficiary] has been involved with the Scientology religion since March 1, 2001. . . . Shortly after she expressed a desire to make working for the Church of Scientology her vocation. Copies of her staff covenants expressing her commitment and dedication to the Scientology religion are attached. . . . [The petitioner] applied for an R-1 temporary religious worker visa for [the beneficiary] and on July 27, 2001 this was granted. She began working for the Church immediately and has continued to work full time ever since.

The petitioner submits copies of various training certificates from 2001, as well as two copies of an "Application, Declaration and General Release / Declaration of Religious Commitment and Application for Membership in a Scientology Religious Order and for Active Participation on Church Staff" (Application) The Application offers only two options for term of service: two and a half years or five years. On March 1, 2001, the beneficiary applied for a period of two and a half years. On July 4, 2003, as that term was nearing completion, the beneficiary applied for the longer five year term.

The Application reads, in pertinent part:

I UNDERSTAND AND AGREE THAT BY THIS DECLARATION I AM DECLARING A RELIGIOUS COMMITMENT TO SPIRITUAL AWARENESS, TO THE SCIENTOLOGY RELIGION AND TO CREATE A BETTER WORLD, IN ACCORDANCE WITH THIS DECLARATION. . . .

I FURTHER UNDERSTAND THAT ALL CHURCH STAFF MEMBERS INCLUDING MYSELF, ARE MEMBERS OF A RELIGIOUS ORDER; THAT THEY SERVE PURSUANT TO THEIR RELIGIOUS OBLIGATIONS AND NOT IN CONTEMPLATION OF RECEIVING ANY COMPENSATION WHATSOEVER, AND IN DOING SO THEY ARE FORSAKING ALL COMMERCIAL AND FINANCIAL MOTIVATION. . . .

EACH CONSIDERS HIMSELF/HERSELF A VOLUNTEER TO CREATE A BETTER WORLD, AND UNDERSTANDS THAT HE/SHE IS NOT AN EMPLOYEE, I.E. IS NOT ENTITLED TO RECEIVE SECULAR BENEFITS SUCH AS A MINIMUM WAGE OR OVERTIME COMPENSATION. . . .

The Church does not provide a pension or any other retirement program. . . .

Church staff members serve pursuant to their personal religious commitment and conviction rather than for monetary gain or other traditional commercial or financial motives or incentives. Nevertheless, the Church will, pursuant to this covenant, furnish certain necessities, including a weekly nominal "pocket money" allowance, and, for certain staff positions, room and board. . . .

I understand that by executing this agreement I am accepting this commitment and making a formal religious vow to serve on staff for the entire period circled above.

(Capitalization in original.)

On April 7, 2005, the director issued a request for evidence (RFE), instructing the petitioner to submit further information about the position offered to the beneficiary, such as job title and specific duties. Some staff members of the Church of Scientology are members of the Sea Organization, which the AAO has found to be a religious order, whose members engage in a religious vocation. Therefore, in the RFE, the director instructed the petitioner to submit information regarding the Sea Organization.

In response, [REDACTED] submits what is described as "a Payroll Disbursement Voucher History for [the beneficiary] showing her weekly pay and tax withholdings for each week she has been employed by [the petitioning church]. This evidences continuous employment from July 27, 2001 through December 31, 2004." Elsewhere in this decision, we shall discuss beneficiary's payment history. We note, here, [REDACTED] repeated references to the beneficiary's church work as "employment," notwithstanding the clause in the Application that specifies that every church staff member "understands that he/she is not an employee" and is, therefore, not entitled to basic employee protections such as minimum wage and overtime pay.

Regarding the Sea Organization, [REDACTED] states that the beneficiary "is not now and has never been a member of the Sea Organization." While the AAO has found that members of the Sea Organization undertake a religious vocation, there has been no finding that every Church of Scientology staff member works in a religious vocation or belongs to a religious order. It cannot suffice simply for a church to declare that all of its workers belong to a religious order. While the determination of an individual's status or duties within a religious organization is not under the purview of Citizenship and Immigration Services (CIS), the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

With regard to the requested description of the beneficiary's duties, [REDACTED] states:

The primary function of [the beneficiary's] position is to help our Church expand by getting and keeping the Scriptures of [REDACTED] Founder of the Scientology religion, known and applied by all our staff and parishioners. She does this by giving briefings to the staff throughout the week and reading quotes from the scriptures to them. She also plays L. Ron [REDACTED] taped lectures to the staff and parishioners on a weekly basis so that they can hear [REDACTED] words directly themselves. . . .

[The beneficiary] ensures that the Scriptures of Scientology are available to all staff and parishioners by ensuring that the Church library is maintained with copies of all the written and recorded words of [REDACTED]. She talks to the staff and parishioners daily to find out if they have any confusions, non-application or misapplication of any of the scriptures in their daily activities and lives. She directs them to the correct Scientology materials whenever needed or gets proper Church staff to assist them.

Another part of [the beneficiary's] duties is ensuring that the staff are working on written programs containing specific scriptures to apply so that the staff can expand their own areas and reach out to help more and more of their fellow man. . . . In particular she is responsible for seeing that the [redacted] Communications Office is functioning exactly according to the scriptures laid out by [redacted]

The [redacted] Communicator is a very important position ecclesiastically within the Scientology religion and it is a top executive position within a Scientology Church. It was established by the Founder [redacted] when he served as Executive Director of the Church of Scientology and maintained a local representative in each church to facilitate his communications.

Today, the duties of the [redacted] Communicator are to ensure that the Scriptures of our Founder, [redacted] are known to all staff and parishioners and applied precisely. This encompasses having all the Scriptures compiled in volumes and packs and ensuring that each staff member knows and has studied the particular Scriptures related to his position within the Church. The duties also include seeing that any misapplication of the Scriptures by a staff member gets corrected. The writings and recorded spoken words of [redacted] on the subject of Scientology collectively constitute the scripture of the religion. [redacted] set forth the Scientology theology and technologies in more than 500,000 pages of writings and over 2,000 tape-recorded public lectures.

[redacted] asserts that the beneficiary's duties occupy "a 40 hour work week."

The director denied the petition, stating that the petitioner had not adequately described the beneficiary's duties, or established "the specific training or theological education required" for the position of [redacted] Communicator. Therefore, the director concluded, "the information provided is insufficient to determine whether the proffered position qualifies as a religious occupation." The director also found no evidence to show that the beneficiary engages in a religious vocation.

We cannot find that the beneficiary engages in a religious vocation. The terms of the Application show that the beneficiary's commitment to the church is temporary (albeit renewable), and the church specifically disclaims any responsibility for the beneficiary's support, either at present or in the beneficiary's old age. While the Sea Organization is a qualifying religious order, the petitioner stipulates that the beneficiary is not a Sea Organization member, and the petitioner has not credibly demonstrated that the very act of working for the church constitutes membership in some unnamed, vaguely described "order."

On appeal, the petitioner submits photocopied excerpts from *What Is Scientology?*, page 276 of which reads, in part: "Another important executive in each church . . . is the [redacted] Communicator. . . . Today, the [redacted] Communicator is responsible for ensuring that the church adheres to Scientology scripture." This and other documentation submitted by the petitioner supports the finding that the position of [redacted] Communicator relates to a traditional religious function within the Church of Scientology. We note the director's objection to the "executive" nature of the position, but this does not mean that the position is

merely administrative. The work of the Communicator is inextricably entwined with church scriptures, i.e., the works of church founder [REDACTED]. We find, therefore, that the position qualifies as a religious occupation.

The director asserts that the petitioner has not shown that the position requires specialized religious training, a finding that the petitioner disputes. There is no statutory or regulatory basis for such a training requirement. Obviously, when a given position clearly requires specific training, 8 C.F.R. § 204.5(m)(3)(ii)(D) requires the petitioner to show that the alien possesses that training; but the issue of training should not be a primary factor when considering the question of whether that position relates to a traditional religious function. Of greater importance is evidence showing that churches or other entities within a given denomination routinely employ paid, full-time workers in comparable positions, and that those positions do not embody fundamentally secular tasks, indistinguishable from positions with secular employers.

The next issue concerns the beneficiary's compensation. 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.

8 C.F.R. § 204.5(m)(4) states, in pertinent part:

Job offer. The letter from the authorized official of the religious organization in the United States must also state . . . how the alien will be paid or remunerated. . . . The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support. In doubtful cases, additional evidence such as bank letters, recent audits, church membership figures, and/or the number of individuals currently receiving compensation may be requested.

As noted above, the Application indicates that church staff members are considered "volunteers" rather than "employees." [REDACTED] states:

[The petitioner] has approximately 70 staff members. . . . They receive a staff allowance from the Church each week. This allowance varies based in part upon the amount of donations received from its parishioners, the amount of services delivered to its parishioners, and the staff member's ecclesiastical position and status within the Church for that week.

The Church will ensure that [the beneficiary] receives adequate support, that she will not become a public charge and that she will not be dependent solely upon supplemental income or solicitation of funds. . . . Copies of her W-2 forms for 2002 and 2003 are attached hereto.

Nothing in the initial filing indicates that the beneficiary's compensation includes room, board, or anything else beyond the "staff allowance." With 70 employees, the petitioner is too small to avail itself of the clause by which a financial officer can attest to the petitioner's ability to compensate the beneficiary. Therefore, the petitioner must not only describe how the beneficiary will be paid, pursuant to 8 C.F.R. § 204.5(m)(4), but also provide evidence of its ability to meet those payments, as required by 8 C.F.R. § 204.5(g)(2).

The Form W-2 Wage and Tax Statements in the record indicate that the petitioner paid the beneficiary \$1,724.80 in 2001; \$5,943.80 in 2002; \$6,218.06 in 2003 and \$10,305.40 in 2004. The petitioner's initial submission contained no financial documentation about the petitioning church. Also, the initial submission did not provide any minimum amount that the petitioner would be obliged to provide to the beneficiary. The general assertion that the church will provide "adequate support" cannot suffice to meet the regulatory requirements cited above. Six thousand dollars a year is not "adequate support," and the petitioner did not identify, or establish its ability to provide, any other church-supplied support to the beneficiary.

In the RFE of April 7, 2005, the director asked: "What amount will the beneficiary be paid for his/her services?" In response, [REDACTED] repeats the assertion that the allowance varies, based on donations received, "the staff member's ecclesiastical position and status within the Church for that week," and other factors. This response suggests that the "ecclesiastical position" of a given church staff member can vary from week to week. [REDACTED] also asserts that the beneficiary "is not dependent on any supplemental employment or on solicitation of funds for her support."

The petitioner submits "a Payroll Disbursement Voucher History," indicating that, since August 24, 2001, the petitioner has issued weekly payments to the beneficiary. The amounts vary from a low of \$4.20 (for the week of July 5, 2003) to a high of \$593.94 (for the week of August 24, 2001, the first week for which payments appear). Until late 2003, most of the weekly payments were below \$100. Subsequent payments have generally been between \$100 and \$300 per week, although some recent payments have been below \$80.

In the RFE, the director instructed the petitioner to "[s]ubmit documentary evidence to show that the petitioner has been providing the beneficiary's housing, meals, clothing, transportation, medical and dental expenses, etc." The petitioner's response to the notice includes no such evidence, and indeed the petitioner has never expressly claimed to provide any of these considerations to the beneficiary. Despite the director's specific request for evidence regarding the beneficiary's housing and other material support, the petitioner did not provide any information about this support in its response to the RFE.

The director denied the petition, stating that the amounts shown on the beneficiary's Forms W-2 "are well under the poverty line. The petitioner submitted no additional documentary evidence of its ability to provide for the beneficiary's needs such as housing, food, clothing, and medical and dental care." The director also noted that the petitioner had not submitted the financial documentation listed at 8 C.F.R. § 204.5(g)(2). The

director concluded: "This lends no confidence to the petitioner's assertion that the beneficiary will not be dependent on supplemental employment or solicitation of funds for support."

On appeal, [REDACTED] states: "Suggested additional evidence, as mentioned in the regulations, consists of bank letters, recent audits, church membership figures, and the number of individuals currently receiving compensation. Attached is a statement of revenues, expenditures and changes in net assets for 2004 and 2003." This statement is not a bank letter, and there is no evidence that the information thereon derived from a recent audit. 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. Furthermore, the petitioner has demonstrated that its weekly allowance for the beneficiary has varied by a factor of more than a hundred, ranging from less than five dollars to more than five hundred dollars. The assertion that the beneficiary will receive an unspecified, fluctuating allowance is not sufficient to demonstrate how the alien will be paid or remunerated as required by 8 C.F.R. § 204.5(m)(4).

On appeal, for the first time, [REDACTED] states that the beneficiary "has support available from her family while she is here in the United States." The petitioner submits newly executed Form I-134 Affidavits of Support from her brother-in-law in Tennessee and her uncle in California. The affidavit of support is relevant in the context of an I-130 petition for an immediate relative, but not in an I-360 religious worker petition. The petitioner has repeatedly indicated that it, the church, would provide "adequate support" for the beneficiary. Only after the director found the amounts provided to be insufficient to support the beneficiary's family of three did the petitioner indicate that the beneficiary would be dependent on relatives for support.

Prior to the denial, the director had instructed the petitioner to provide relevant information regarding the beneficiary's means of support. At that time, the petitioner made no mention of the beneficiary's reliance on relatives. Specific requests by the director went unaddressed at that time. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). When we consider these omissions with other factors, such as the petitioner's contradictory assertions as to whether or not the beneficiary's work amounts to "employment," we conclude that the petitioner has not adequately set forth the terms of a qualifying job offer. This factor, by itself, is sufficient to warrant denial of the petition and dismissal of the appeal, notwithstanding the reversal of the director's finding that the beneficiary's position is not a religious occupation.

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.

ORDER: The appeal is dismissed.