

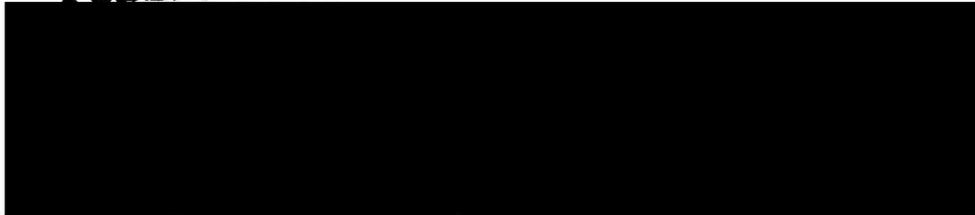
**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



U.S. Citizenship
and Immigration
Services

C1

PUBLIC COPY



FILE: [redacted] Office: TEXAS SERVICE CENTER Date: APR 10 2006
SRC 99 257 52147

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, Texas Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a subsidiary 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 (Sea Org), a religious order of the Church of Scientology. The director determined that the petitioner had not established (1) that the beneficiary's position qualifies as either a religious occupation or a religious vocation, (2) that the beneficiary had the requisite two years of continuous work experience immediately preceding the filing date of the petition, or (3) the petitioner's ability to compensate the beneficiary.

On appeal, the petitioner requests oral argument. A request for oral argument must set forth facts explaining why such argument is necessary to supplement the appeal. 8 C.F.R. § 103.3(b). The request fails to set forth facts explaining why such argument is necessary, and the request must therefore be denied.

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 582.

The first issue to be addressed concerns the nature of the beneficiary's work. 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 an affidavit accompanying the initial filing of the petition, [REDACTED] personnel officer with the petitioning church, states that the beneficiary joined the Sea Organization in 1987, and that "As is true for all members of the Sea Organization, the Church will provide him with all food, clothing, transportation and health care. In addition, he will receive \$50.00 per week spending allowance." The record indicates, elsewhere, that the petitioner also provides housing.

The director concluded that the petitioner did not establish that the beneficiary's work constitutes a religious occupation, or that the beneficiary is a full member of a *bona fide* religious order, and engaged in a religious vocation therein. On appeal, 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 August 30, 1999 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 November 5, 1987. Subsequently, the petitioner has submitted 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 August 30, 1997 and continuously engaged in the vocation during that time.

The petitioner has submitted copies of church documents indicating that the beneficiary was considered a Sea Org member during 1988. There are no Fitness Board documents, but there is ample secondary documentation to corroborate the 1988 date. This indicates that the beneficiary became a full member of the Sea Org more than a decade prior to the petition's August 1999 filing date. We note that an affidavit from [REDACTED], submitted on appeal, indicates that the beneficiary became a full Sea Org member in July 1988. A "Sea Org Member Hat" certificate was issued to the beneficiary on May 20, 1988. Thus, we can conclude that even a "Sea Org Member Hat" certificate, which on its face would seem to suggest that the recipient is a Sea Org member, is not persuasive evidence of full Sea Org membership.

There remains the question of the continuity of the beneficiary's active participation in the religious vocation from August 1997 to August 1999. We emphasize, here, that while taking the vows of a religious order requires action on the part of an individual, the subsequent passage of time is a passive event requiring no particular action by the individual. Thus, the petitioner cannot prove that the beneficiary was continuously engaged in a religious vocation for more than two years, merely by showing that more than two years have passed since the beneficiary took the vows of the order.

The petitioner has submitted Form W-2 Wage and Tax Statements that it issued to the beneficiary in 1998 and subsequent years, showing that, on average, the beneficiary received at least the \$50 weekly allowance during those years. The petitioner has not, however, provided the beneficiary's Form W-2 from 1997. We must, therefore, rely on other means to determine the extent of the beneficiary's work during the last months of 1997.

The record contains a November 5, 1997 notice, indicating that, on September 19, 1997, the petitioner applied for an R-1 nonimmigrant religious worker visa on the beneficiary's behalf, and that the application was approved effective October 4, 1997. This contemporaneous documentation shows that the beneficiary received permission to work for the petitioner over a month after the qualifying period began.

[REDACTED] in the introductory affidavit accompanying the initial filing, states: "In March 1997, [the beneficiary] came to the Church of Scientology in Clearwater work [*sic*], and began work as a Missionary in the Advanced ministry section of our Church, where he remains today." This statement, taken by itself, indicates that the beneficiary began working for the petitioner some months before receiving the R-1 visa. This is consistent with the beneficiary's assertion, on Form G-325A, Biographic Information, that he began working for the petitioner in March 1997. Other statements, however, do not corroborate this version of events.

On September 17, 2003, the director issued a notice of intent to revoke, stating that the petitioner had not provided "actual work logs, processed checks or paycheck stubs, W-2's or Form 1040's [to] demonstrate full-time fully-year traditional religious or vocational work" during the two-year qualifying period. The director emphasized that the petitioner must show that the beneficiary engaged in qualifying work throughout the entire two-year period, and that "intermittent" work would not establish eligibility.

In response, in an affidavit dated October 20, 2003, [REDACTED] the petitioner's chief personnel officer, states:

In March 1997 [the beneficiary] came to our church to attend seminars concerning his work at CSFSSO [another church facility] and during this period of time, [the petitioner] asked CSFSSO if [the beneficiary] could remain at our facilities and work in the advanced ministry section of our Church. . . . As [the beneficiary] was already a member of the Sea Organization and otherwise qualified to work at [the petitioning church], he was approved for this transfer. After obtaining permission to work in the USA in October 1997, [the beneficiary] started working for our Church as a Missionary.

Subsequently, on December 8, 2003, [REDACTED] signed another sworn statement, indicating that the beneficiary "started working for our church in the USA on a continuous basis since October 1997." [REDACTED] sworn statements indicate that, while the beneficiary arrived in the United States in March 1997, he did not "start working" until October 1997. Simple presence on church premises does not constitute engagement in a vocation.

[REDACTED], one of the petitioner's personnel officers, states in an affidavit dated October 20, 2003 that "since his arrival at our church in late 1997 until the present, [the beneficiary] has worked on a full time basis." The reference to "late 1997," while vague, is consistent with [REDACTED] repeated statements that the beneficiary did not begin working for the church until October 1997. These statements are also consistent with the known issuance of the beneficiary's R-1 visa effective October 1997.

The petitioner has submitted copies of weekly payment vouchers issued to the beneficiary over several years. The earliest voucher is dated March 1, 1998. The first twelve vouchers show "back pay" equivalent to one week's allowance at the then-current rate. Thus, the back pay covers the twelve-week period that began in early December 1997. Once again, this evidence, while persuasive as far as it goes, does not demonstrate that the beneficiary was an active, compensated Sea Org member throughout the entire qualifying period.

Prior to his arrival in Clearwater, the beneficiary had been stationed aboard the Freewinds, a ship owned by the Church of Scientology. The record contains no records or documents from ranking officers of the Freewinds to confirm that, from March to October 1997, the beneficiary was considered an active crewman of the Freewinds who was acting on behalf of, and compensated by, those in charge of the ship.

The director, in revoking the approval of the petition, stated that the petitioner's response to the notice of intent to revoke failed to resolve the issues raised in that notice. On appeal, the petitioner submits a new affidavit from the beneficiary, who states that he worked full-time aboard the Freewinds "until my transfer back to [the petitioning entity], which occurred in 1998." The beneficiary states that he has worked for the petitioner "[f]rom 1998 to the present." This imprecise assertion does not serve to demonstrate full-time work in late summer of 1997.

The petitioner submits a copy of a letter dated September 21, 2004, from [REDACTED] director of legal affairs for the Church of Scientology Flag Ship Service Organization, Inc. [REDACTED] states that the aforementioned organization employed the beneficiary "during the year 1997," paying him a total of \$934.88. At

\$50 per week, the above amount accounts for roughly 19 weeks of employment. Like other evidence discussed above, this letter is imprecise and fails to present *prima facie* evidence that the beneficiary actively engaged in qualifying work during a crucial part of 1997.

While the petitioner has amply shown that full membership in the Sea Org is a qualifying religious vocation, that the beneficiary joined the Sea Org in the late 1980s, and its ability to compensate the beneficiary, there remains a gap in the evidence for some months in late 1997, rendered all the more distinct by contrast with the voluminous evidence that establishes the beneficiary's work during later periods.

The available witness statements are in conflict as to whether the beneficiary actively worked for the petitioner (as opposed to having passively been present on the petitioner's premises) during the early months of the qualifying period. In the absence of documentary evidence, we cannot arbitrarily assume that favorable witness assertions (sworn or otherwise) are inherently more reliable or credible than witness statements that prevent a finding of eligibility. If we thus discount the conflicting witness statements, we are left with visa documents and pay records that indicate that the beneficiary's qualifying work for the petitioner began less than two years prior to the petition's August 30, 1999 filing date. The petitioner has, therefore, failed to meet this criterion.

The remaining issue concerns the petitioner's ability to compensate the beneficiary. The regulation at 8 C.F.R. § 204.5(g)(2) requires the petitioner to demonstrate this ability. In determining the petitioner's ability to pay the proffered wage during a given period, Citizenship and Immigration Services (CIS) will first examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. In the instant case, the petitioner has shown through various payroll records that the beneficiary has received the \$50 weekly allowance since 1998. Considering that the compensation of a Sea Org member consists of room, board, a \$50 weekly allowance and other basic subsistence needs, we see no serious basis to dispute the petitioner's ability to provide this minimal support to the beneficiary.

Pursuant to the above discussion, the petitioner has overcome most of the stated grounds for revocation. The one remaining basis is not a permanent bar to eligibility; rather, it is specific to the time period covered by this petition, *i.e.*, 1997 to 1999. Therefore, the gap in documentation in late 1997 would not be applicable to a newly-filed petition. 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 met that burden. Accordingly, the decision of the director to revoke the approval of the petition will be affirmed.

ORDER: The appeal dismissed.