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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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AUG 11 2006

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:

WAC 01 023 54059

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California 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 sustained. The approval of the petition will be reinstated.

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 meets the minimum requirements for her position, or that the beneficiary worked continuously in the proffered position throughout the two years immediately preceding the filing date of the petition.

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 unrebutted, 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.

Counsel states: “In *Firstland Int’l, Inc. v. Ashcroft*, [377 F.3d 127] (2d Cir. August 2, 2004), the Second Circuit Court of Appeals recently held that under the terms of INA §205, an immigrant visa petition cannot be revoked when the beneficiary is already in the United States. The court found that the statutory notice requirement is clear and unambiguous.” In that opinion, the court in *Firstland* interpreted the third and fourth sentence of section 205 of the Act, 8 U.S.C. § 1155 (2003), to render the revocation of an approved immigrant petition ineffective where the beneficiary of the petition did not receive notice of the revocation before beginning his journey to the United States. *Firstland*, 377 F.3d at 130. Counsel asserts that the reasoning of

this opinion must be applied to the present matter and accordingly, the director may not revoke the approval because the beneficiary did not receive notice of the revocation before departing for the United States, because the beneficiary was already in the United States when the director issued the revocation.

According to the record of proceeding, the petitioner and the beneficiary are in California; thus, this case did not arise in the Second Circuit. *Firstland* was never a binding precedent for this case. Even as a merely persuasive precedent, moreover, *Firstland* is no longer good law.

On December 17, 2004, the President signed the Intelligence Reform and Terrorism Prevention Act of 2004 (S. 2845). See Pub. L. No. 108-458, 118 Stat. 3638 (2004). Specifically relating to this matter, section 5304(c) of Public Law 108-458 amends section 205 of the Act by striking "Attorney General" and inserting "Secretary of Homeland Security" and by striking the final two sentences. Section 205 of the Act now reads, in its entirety: "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 1154 of this title. Such revocation shall be effective as of the date of approval of any such petition."

Furthermore, section 5304(d) of Public Law 108-458 provides that the amendment made by section 5304(c) took effect on the date of enactment and that the amended version of section 205 applies to revocations under section 205 of the Act made before, on, or after such date. Accordingly, the amended statute specifically applies to the present matter and counsel's *Firstland* argument no longer has merit.

Having addressed the above procedural issues, we turn to the merits of the petition and the substantive grounds for revocation.

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)(3)(ii) requires the petitioner to establish:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work; and . . .

(D) That, if the alien is to work in [a non-ministerial] religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother.

The petitioner has asserted that the beneficiary works in a religious vocation as a member of the Sea Org. The director, in this proceeding, at one point contested the Sea Org's status as a recognized religious order whose members engage in a religious vocation, but the director does not repeat this argument in the notice of revocation. Therefore, the director has effectively stipulated that Sea Org members practice a religious vocation. We concur with this finding and need not discuss the matter in any detail here.

Having concluded that Sea Org members practice a religious vocation, we must now determine whether the beneficiary is a fully-qualified Sea Org member, as required by 8 C.F.R. § 204.5(m)(3)(ii)(D), and whether the beneficiary was a full Sea Org member continuously throughout the two-year period prior to the petition's October 2, 2000 filing date, as required by 8 C.F.R. § 204.5(m)(3)(ii)(A). These two issues are related; if the beneficiary was not a fully qualified Sea Org member at the date of filing, then clearly she could not have been practicing the vocation during the preceding two years. Conversely, if the petitioner can establish that the beneficiary was a fully qualified Sea Org member during the two-year qualifying period, then the director cannot reasonably find that the beneficiary does not possess the necessary qualifications.

In an affidavit accompanying the initial filing, Carly Dobbe, a personnel officer with the petitioning church, describes the beneficiary's history with the petitioning church:

In March 1990, [the beneficiary] joined the Sea Organization at the Church of Scientology Flag Service Organization in Florida. . . .

In 1995, [the beneficiary] was promoted to come to the mother Church in Los Angeles. . . .

In September 1997 [the beneficiary] acquired additional responsibility of a higher position and became the deputy under an executive director. . . . [The beneficiary] has held this position since 1997. . . .

[The petitioner] has very rigid staff qualifications which all staff members must meet. One of these qualifications is that each religious worker take the vows of our religious order called the Sea Organization.

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 (under her maiden name) and dated March 2, 1990.¹

On February 20, 2001, the director instructed the petitioner to submit additional evidence regarding the beneficiary's work history and other aspects of the petition. In response, [REDACTED] a legal officer with the petitioning church, states that the beneficiary "has completed a number of religious courses including courses which will assist her to be a better religious counselor." [REDACTED] "On September 14, 2000, [the beneficiary] began an extensive religious training program which includes extensive training in religious counseling so that she may perform that counseling for others and receive some [of] that counseling herself."

The petitioner submits copies of the beneficiary's Form W-2 Wage and Tax Statement for 2000, and payroll records from September 1998 through March 2001, establishing that the petitioner compensated the beneficiary without interruption during that time.

The director approved the petition on July 10, 2001, but issued a notice of intent to revoke on January 14, 2004. This notice cited numerous grounds for revocation. We need concern ourselves here only with the two grounds that subsequently appeared in the notice of revocation. The director noted that the petitioner has mentioned certain training requirements, but that the petitioner "did not indicate the specific level required or the specific training classes required. Neither did the petitioner submit evidence that the beneficiary had the required training." The director also stated that, if the beneficiary "began an extensive religious training program" on September 14, 2000 in order to take on new duties, then the beneficiary could not have been performing those same duties throughout the 1998-2000 qualifying period.

In response to the notice, [REDACTED] states:

The necessary requirements for this position are an understanding of Church scriptures concerning Scientology religious counseling and religious training. . . .

[W]hile [the beneficiary] has received some additional religious training, in fact it is above and beyond what she accomplishes on a daily basis in her religious vocation.

The director revoked the approval of the petition on October 8, 2004, stating that the petitioner has not submitted documentary evidence to establish the level of training required for her position, or to establish that the beneficiary possesses the required level of training. The director also stated: "the beneficiary only began

¹ The document shows a 1995 copyright date, but the petitioner has already resolved this discrepancy with credible documentation. The Contract reproduced in the record is a copy, prepared after the original was lost.

training for the proffered position on September 14, 2000. Thus the record indicates that the beneficiary did not work in the same capacity as the proffered position during the entire two-year period from October 2, 1998 until October 2, 2000" (director's emphasis).

On appeal, the petitioner submits additional documents showing that the beneficiary became a full member of the Sea Org in April 1990. This evidence satisfies 8 C.F.R. § 204.5(m)(3)(ii)(D), demonstrating that the religious denomination considers the beneficiary to be qualified to engage in the religious vocation of a Sea Org member.

Upon examination of the regulatory definitions at 8 C.F.R. § 204.5(m)(2), it is evident that a discussion of specific duties is germane to religious occupations, but not to religious vocations. In other words, if the duties of a worker in a religious occupation change drastically, it can be said that the worker has changed occupations. But if a member of a religious order changes specific duties, while remaining a member of that order working on behalf of the order (rather than on behalf of some secular entity), the individual has not undertaken a new religious vocation. Unlike a religious occupation, which is defined largely by the nature of the **duties** performed, a religious vocation is defined by such elements as permanent commitment and complete material support (as opposed to a salary or wage). Thus, while the beneficiary's duties may have evolved during the two-year qualifying period, this progression does not interrupt the continuity of her participation in the religious vocation of a Sea Org member.

Pursuant to the above discussion, the petitioner has overcome the stated grounds for revocation. Upon review of the record, we see no readily apparent obstacle to the approval of the 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 met that burden. Accordingly, the director's notice of revocation will be withdrawn and the approval of the petition will be reinstated.

ORDER: The appeal is sustained and the approval of the petition is reinstated.