

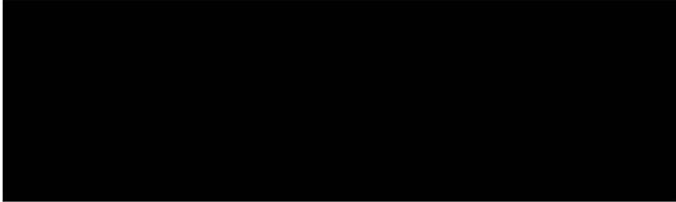


U.S. Citizenship
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FILE: WAC 03 263 54028 Office: CALIFORNIA SERVICE CENTER Date: **FEB 21 2006**

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

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 appeal will be sustained and the petition will be approved.

The petitioner is the publishing arm of the C [REDACTED] 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: (1) the petitioner qualifies as a tax-exempt religious organization; (2) the beneficiary had the requisite two years of continuous work experience immediately preceding the filing date of the petition; or (3) the beneficiary's position qualifies as either a religious occupation or a religious vocation.

The first issue we shall address concerns the petitioner's tax-exempt status. 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

According to an October 1, 1993 determination letter from the Internal Revenue Service (IRS), the petitioner's tax-exempt status derives from classification not under section 170(b)(1)(A)(i) of the Internal Revenue Code of 1986 (the Code), which pertains to churches, but rather under section 509(a)(3) of the Code, as "an organization which . . . is organized . . . exclusively for the benefit of . . . one or more specified organizations described in paragraph (1) or (2)" of section 509(a) of the Code.

The director, in denying the petition, argued that the petitioner is not classified as a "church" under section 170(b)(1)(A)(i) of the Code, and therefore it cannot be considered to be a qualifying tax-exempt religious organization. On appeal, counsel argues that the director has misinterpreted the pertinent regulations, and asserts that an entity can be a qualifying religious organization even if it is not a "church" *per se*. A memorandum from William R. Yates, Associate Director of Operations, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003), affirms that an entity need not be a "church," so long as it is tax exempt with a qualifying religious affiliation and function. In this instance, the record shows that the petitioning entity is a 501(c)(3) non-profit organization that exists solely for the benefit of the Church of Scientology. From the available evidence, we concur that the petitioner is a qualifying tax-exempt religious organization within the scope of the relevant statute and regulations, and we hereby withdraw the director's finding to the contrary.

Next, 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:

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 15, 2003, [REDACTED] the petitioner’s legal officer, describes the beneficiary’s work:

[The beneficiary] was one of the first staff members of the [REDACTED] in St. Petersburg, Russia. In September, 1997, he joined our religious order called the Sea Organization. . . . [The petitioner’s] calling to religious life brought him to [the petitioning entity] in May, 1998 where he worked with many Scientology groups throughout the United States and Mexico to help them disseminate the Scientology religion. In April, 2000, he traveled to Brazil to assist in establishing an office for the publication and dissemination of the Scriptures in Brazil. . . . [The beneficiary] was in Brazil until September 20, 2001 when he returned to [the petitioning entity] on an R-1 visa. For the past 2 years . . . he has devoted all of his working hours to helping parishioners distribute the scriptures and to disseminate the religion. . . . [I]n December, 2002 he was ordained as a minister of our Church. . . .

[The petitioner’s] staff are all members of the Sea Organization. . . .

Sea Organization members devote their lives to their religion; they live in a community of other Sea Organization members and wear specific uniforms. Sea Organization members are provided with their meals, housing, clothes, medical and dental care, transportation and a small weekly allowance, currently \$50.00 per week, and occasional small bonuses.

The director concluded that the petitioner had not adequately described the beneficiary's duties, and that the duties that the petitioner did describe are not inherently religious in nature, and thus do not constitute a qualifying religious occupation. The director further concluded that the petitioner has failed "to show that the Sea Organization has a governing structure, a formal legal organizing document, 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.

CIS has obtained from the Church of Scientology 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 19, 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).

In her September 15, 2003 letter, as discussed above, Ms. [REDACTED] states that the beneficiary worked in Brazil until he arrived in the United States on September 20, 2001, to begin working for the petitioner, and that the beneficiary became an ordained minister in December 2002.

The petitioner has submitted Form W-2 Wage and Tax Statements, showing that the petitioner paid the beneficiary \$22,969.38 in 2001 and \$10,762.04 in 2002. A subsequent submission shows weekly payments to the beneficiary of between \$48 and \$70 in November and December 2003, after the filing date. The record does not show how much the beneficiary received between January and September 2003, the final nine months of the two-year qualifying period, although a financial official of the petitioning organization affirms that the petitioner supported the beneficiary during that time.

The director, in denying the petition, stated: "The petitioner submitted no documentary evidence to show that the beneficiary is in fact a full member" of the Sea Organization. The director determined that the beneficiary has not continuously performed the same duties, as shown by his ordination and by the significant decrease in the beneficiary's compensation from 2001 to 2002. The director noted that the beneficiary was purportedly in Brazil on September 19, 2001, exactly two years prior to the filing date, but that the petitioner has produced no proof of the beneficiary's activities prior to the beneficiary's September 20, 2001 admission into the United States as an R-1 nonimmigrant religious worker.

On appeal, counsel cites *Lagandaon v. Ashcroft*, 383 F.3d 983, 986 (9th Cir. 2004), in which the Ninth Circuit found that “the period beginning May 14, 1987, and ending May 13, 1997, is ‘a continuous period of not less than 10 years.’” In the *Lagandaon* decision, the Ninth Circuit observed that the period from January 1 to December 31 is recognized as a year. The Ninth Circuit also cited *Griffith v. Bogert*, 59 U.S. 158, 159 (1855), in which the United States Supreme Court held that the 18-month period that began on November 1, 1819, ended on April 30, 1821, rather than May 1 of the latter year. By the same logic, the period from September 20, 2001 to September 19, 2003 amounts to two years. We note that the present matter arose within the geographic jurisdiction of the Ninth Circuit.

On appeal, the petitioner acknowledges that there are several steps required to join the Sea Organization, such as completion of the Estates Project Force (EPF) and review by a Fitness Board. In a new affidavit, Jenni Strom, the petitioner’s vice president of personnel, states that the beneficiary “participated in all of the courses and completed all the requirements of the EPF in October 1997. He was found eligible and was accepted for full Sea Organization membership at that time.”

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, absent evidence of an interruption of the beneficiary’s work, 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 19, 2003.

In a supplement to the appeal, the petitioner submits copies of church documents indicating that the beneficiary passed the Fitness Board on October 1, 1997, the same day he completed “Product Zero.” This indicates that the petitioner was a full member of the Sea Organization for more nearly six years prior to the petition’s September 2003 filing date.

While the change in the beneficiary’s compensation from 2001 to 2002 is puzzling, the amounts in both years exceed the proffered allowance of \$50.00 per week, and the petitioner directly paid the beneficiary, so there is no readily evident reason to conclude that the amounts reflected on the beneficiary’s Forms W-2 reflect anything other than wages paid for work that the beneficiary performed for the petitioner. In this particular instance, it does not appear that overpayments to the beneficiary disqualify him for the benefit sought. We find, based on the evidence of record, that the beneficiary has been practicing a religious vocation throughout the statutory two-year qualifying period.

The director, in the denial notice, turned to the issue of various certificates issued to the beneficiary, stating:

[D]oubt has been cast on the authenticity of the Contract of Employment submitted with the petition. USCIS notes that the beneficiary’s name is spelled differently on the contract than on Form I-94, Departure Record, completed by the beneficiary, raising doubts as to whether the beneficiary actually completed the contract himself. . . . The certificate of “Success Through Communication Course Graduate” was allegedly issued in 1994. However, the certificate was copyrighted in 1995 or 1996. As such, [it] could not have been issued in

1994. The certificate of “Introduction to Scientology Ethics Course Graduate” was allegedly issued in 1997, but contains the same signatures as the certificate of “Success Through Communication Course Graduate” allegedly issued in 1994.

With regard to the variant spellings of the beneficiary’s name, we note that the beneficiary’s native alphabet is Cyrillic rather than the Roman alphabet used in the English language. Therefore, the name must be transliterated when used on English-language documents and forms. It is not unusual for variations in spelling to appear when transliterating from one alphabet or writing system to another. We note that the beneficiary’s first name is spelled [REDACTED] on his passport, and [REDACTED] on his R-1 nonimmigrant religious worker visa, but the director has expressed no concerns about the authenticity of either of those documents. We note that the beneficiary evidently used the spelling [REDACTED] during or immediately after his time in Brazil; it is plausible that local Portuguese-speaking population favored this transliteration. Because the [REDACTED] spelling appears on the beneficiary’s R-1 visa (issued in São Paulo), he may have intentionally used the same spelling on the Form I-94 in order to avoid unnecessary confusion and delay during border crossing inspections. This is only speculation, of course, but it demonstrates that one need not infer forgery or document substitution from the variations in the spelling of the beneficiary’s name. The director expressed no doubt about the beneficiary’s *signature* on the contract.

As for the anachronistic dates on some of the beneficiary’s training certificates, the documents in question are, in fact, marked “Copy From Church Records,” with the signature of [REDACTED] (identified elsewhere as “Director of Validity”). The term “copy,” here, clearly does not mean “photocopy,” as the “copies” bear original signatures in ballpoint pen (which also demonstrates that the signatures from one document were not simply copied onto another document). Rather, these documents are “copies” in the sense that they are newly-executed documents that relay older information from church records. Corroborating this interpretation of the word “copies” is a newly submitted document, indicating that the beneficiary “successfully completed the requirements necessary for PRODUCT ZERO on June 25, 1999.” The document also states “Issued at: Los Angeles, CA, on September 22, 2005.” This demonstrates that the petitioner does, on occasion, reconstruct such certificates based on information in church records. The director cites no contradictory evidence that would cast doubt on the information shown on these certificates.

We acknowledge the director’s concern about the apparent anachronisms in the certificates, but we find the petitioner’s explanation to be credible in the context of the materials submitted. We further 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, in this proceeding, did not exercise this regulatory prerogative.

Pursuant to the above discussion, the petitioner has overcome the stated grounds for denial. 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 sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.