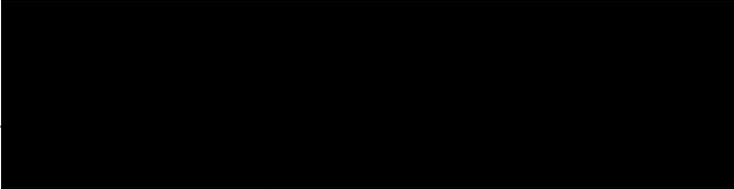




U.S. Citizenship
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Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JAN 17 2006

WAC 03 163 53568

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.

2 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 preceding the filing date of the petition. The director also questioned the authenticity of a key document reproduced in the record.

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)(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 May 2, 2003, [REDACTED] a legal officer with the petitioning entity, states that the beneficiary "has worked for over four years with the Church of Scientology and she is being offered full time employment with [the petitioner] here in Los Angeles, California." [REDACTED] does not specify the particular church for which the beneficiary has worked in the past.

In an affidavit dated May 2, 2003, Jane Urban, a personnel officer with the petitioning entity, states:

[The beneficiary] joined Church staff in Bogota, Colombia in September 1992. . . .

In 1997, [the beneficiary] became a Sea Organization member and in 1998 she came to the United States.

Initially from 1998 until October 2001, [the beneficiary] worked in the area which oversaw Church staff members, from all over, progressing on their religious studies internships. . . . During her tenure in this area she assisted to get between 200-300 Church staff members through their religious studies programs and graduated.

From October 2001 until May 2002, her functions changed and her main duty was to get other Church programs accomplished and scriptures more closely followed.

In May 2002 her job functions returned to similar functions as [performed from 1998 to 2001] and then in April 2003, she transferred into another Church unit which is directly relevant to Church expansion all over the world. . . .

[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. . . .

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 whatever description the petitioner has offered shows that the beneficiary's duties have changed during the two-year qualifying period. The director also found 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 exact duties in any detail. Variations in the beneficiary's duties are not disqualifying, provided that those duties are performed exclusively in service of the religious order to which the beneficiary belongs.

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 May 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 Religious Commitment," which reads, in part, "I commit myself to the Sea Organization for the next billion years," signed by the beneficiary and dated August 15, 1997.

On August 8, 2003, the director instructed the petitioner to submit further evidence to show the continuity of the beneficiary's work. In response, [REDACTED] has asserted that the beneficiary "has worked for the Church of Scientology on a daily basis from May 5, 2001 (and before) until the present. . . . Her remuneration is and has been approximately \$50.00 spending allowance weekly in addition to her food, room, transport and medical and a yearly bonus at Christmas time and in August . . . (see a copy of her W-2 form from 2002 attached)." The Form W-2 Wage and Tax Statement shows that the Church of Scientology Western United States (CoSWUS), 1308 L. Ron Hubbard Way, Los Angeles, paid the beneficiary \$1,164.96 in 2002. The CoSWUS is a legally distinct entity from the petitioner; they are incorporated separately, have different Employer Identification Numbers and operate from different addresses.

The petitioner submits a payroll printout showing weekly \$50 payments to the beneficiary in August 2003, and a bonus of \$185.35. The printout concerns only the month of August 2003; if the petitioner has comparable records for other months, the petitioner has chosen not to submit them.

On December 10, 2003, the director issued another request for evidence. The director instructed the petitioner to submit the beneficiary's original "Sea Organization Religious Commitment" document, and to explain why the beneficiary's 2002 Form W-2 indicates that she worked for the CoSWUS instead of the petitioning entity.

The director also requested copies of earlier Forms W-2 issued to the beneficiary. The director instructed the petitioner to submit letters from authorized officials of the entities where the beneficiary actually worked.

The petitioner has submitted, as requested, the original "Sea Organization Religious Commitment" document. Pursuant to 8 C.F.R. § 103(b)(5), the director must return this original document to the petitioner once adjudication is complete. As of this writing, the original document is still in the record of proceeding. The original document shows a 2002 copyright date, indicating that the beneficiary could not have signed this document in 1997.

states that the beneficiary originally worked at CoSWUS and later "was promoted to the Mother Church." She does not specify when the transition took place, and the petitioner's response does not include any documentation from any CoSWUS official to describe or verify the beneficiary's work there. does not establish how she has standing to attest to work that the beneficiary performed at CoSWUS.

The petitioner submits copies of Forms W-2. In addition to the 2002 form, discussed above, the other forms show that the CoSWUS paid the beneficiary \$2,839.89 in 2001 and the petitioner paid the beneficiary \$2,035.35 in 2003.

The director, in denying the petition, observed that the "Sea Organization Religious Commitment" document is not a decisive instrument of membership in the Sea Org, and that the petitioner had not demonstrated that the beneficiary is in fact a full member of the Sea Org. The director noted that the "Sea Organization Religious Commitment" document cannot originate from 1997, and therefore it is not first-hand evidence that the beneficiary was involved with the Sea Org in 1997.

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 May 5, 2003 and continuously engaged in the vocation during that time.

In a supplement to the appeal, the petitioner submits copies of church documents, including a document indicating that the beneficiary passed the Fitness Board on September 10, 1997, the same day she completed "Product Zero." This indicates that the beneficiary was a full member of the Sea Org for more than five years prior to the petition's May 2003 filing date. One document bears the legend "Issued at: Los Angeles, California on 8 October 2005." This demonstrates that the petitioner does, on occasion, reconstruct such certificates based on information in church records. The 2002 certificate appears to be such a reconstruction. Other documents appear to be contemporaneous materials from the late 1990s rather than reconstructions.

While it is of some concern that the petitioner has submitted a reconstructed document without plainly labeling it as such, there remains sufficient additional documentation and information to support the petitioner's claim that the beneficiary joined the Sea Org in 1997. We see no evidence of fraudulent intent in the petitioner's submission

of a reconstructed document. (Such concerns must be addressed case-by-case, rather than with the inflexible *a priori* presumption that reconstructed documents always, or never, denote attempted fraud.)

More serious is the director's observation that, according to the Forms W-2, the beneficiary did not receive \$50 per week consistently throughout the qualifying period. If the beneficiary's weekly allowance "has been" \$50, then she should have received \$2,600 per year, even before taking into account her two annual bonuses. Only the 2001 W-2 shows an amount sufficient to account for weekly \$50 payments and bonuses. We acknowledge that the "allowance" is not an hourly wage or salary. The issue is not over payment of an hourly wage; the issue is the obvious contradiction between the claim that the beneficiary's "remuneration is *and has been* approximately \$50.00 spending allowance weekly" (emphasis added) plus bonuses, and Forms W-2 showing that the beneficiary has received substantially less than that amount in both 2002 and 2003. This contradiction raises obvious concerns regarding the credibility of [REDACTED] unsupported claims, and yet another letter from the same source cannot dispel those concerns.

Added to this is the fact that, unless [REDACTED] who prepared the appellate brief¹) worked at the CoSWUS or has access to the CoSWUS' records, she is in no position to attest to personal knowledge of the beneficiary's work at the CoSWUS prior to 2003. She does not state that she personally witnessed the beneficiary's work at the CoSWUS, nor does she provide contemporaneous CoSWUS records upon which she could have based her statements. When considering [REDACTED] general assertion that the beneficiary worked continuously at the CoSWUS, we cannot ignore that documentary evidence contradicts her claims regarding the beneficiary's compensation, and there is no reason to believe that her assertions regarding the continuity of the beneficiary's work are any more reliable than those contradicted claims. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988). Here, the petitioner does not even attempt an explanation, apart from very general arguments to the effect that monetary considerations do not apply to special immigrant religious worker petitions. The nature of the classification sought does not give the petitioner license to make unsubstantiated claims, nor do they entitle the petitioner to an unquestioned presumption of accuracy or credibility when other documents in the record show that some of the petitioner's claims are demonstrably incorrect. 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).

Despite the petitioner's evident possession of weekly pay records (as submitted for August 2003), the petitioner has submitted no such evidence that applies during the May 2001 to May 2003 qualifying period; and despite the director's request, the petitioner has produced nothing from the CoSWUS that would

¹ The similarity of signatures suggests [REDACTED] be one and the same.

demonstrate the continuity of the beneficiary's work there prior to her transfer to the legally distinct petitioning entity. [REDACTED] contends "there is no requirement to obtain experience letters from every location at which a religious vocation has been performed." The regulations contain no specific requirement to that effect, but more generally the statute and regulations plainly place the burden of proof on the party seeking benefits, as affirmed in *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). Because the beneficiary is said to have spent most of the qualifying period at the CoSWUS and not at the petitioning church, unsubstantiated assertions from officials of the petitioning church cannot suffice to establish the continuity of the beneficiary's work at the CoSWUS. The low amounts shown on the beneficiary's Forms W-2 are consistent with a finding that there were significant interruptions in the beneficiary's work, and the petitioner has submitted nothing to overcome such a finding, despite repeated requests for evidence. 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). We note that, by signing the Form I-360 petition, the petitioner authorized "the release of any information . . . from the petitioning organization's records" necessary to determine eligibility. If the petitioner subsequently refuses to provide this information, this refusal necessarily carries with it consequences relating to the outcome of the proceeding.

The record contains nothing from anyone at the CoSWUS to verify the nature or extent of the beneficiary's activities there, nor any weekly payroll records from the CoSWUS to settle the question of whether the beneficiary steadily received greatly reduced payments, or whether the beneficiary only received a small number of allowance payments due to significant interruptions in activity at the CoSWUS. Neither [REDACTED] anyone else at the petitioning church is a CoSWUS official with authority to speak on behalf of the CoSWUS or to verify, first-hand, what the beneficiary was doing at the CoSWUS or whether there were any major interruptions in that work. Because the director has already informed the petitioner of this deficiency in the record, and the petitioner has done nothing to remedy it, it would serve no useful purpose to remand the matter for a new decision. Nevertheless, this dismissal is without prejudice to a future petition for which the petitioner provides the required evidence.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely 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.