



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
SRC 02 255 50988

Office: TEXAS SERVICE CENTER

Date: JAN 17 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.

Maia Johnson

2 Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas 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 sustained and the petition will be approved.

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 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 found that the petitioner had not established its ability to compensate the beneficiary according to the stated terms.

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--

* * *

(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 an undated affidavit, [REDACTED] vice president of the petitioning church, states:

In September 1998, [the beneficiary] joined the Sea Organization . . . and came to work at our Church. . . . Since her arrival here in the United States, [the beneficiary] has been working on a full time basis as an auditor for our Church. . . .

As is true for all members of the Sea Organization, the church will provide him [sic] with all food, clothing, transportation and health care. In addition, she will receive \$50.00 per week spending allowance.

The director concluded that the petitioner did not adequately establish the religious nature of the beneficiary's duties, or otherwise demonstrate that the beneficiary works in a religious occupation or 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.

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 26, 2002 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 May 17, 1997.

The director, in denying the petition, determined that the Sea Org "Contract of Employment" is not a decisive instrument of permanent commitment to the Sea Org.

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 the August 2002 filing date and continuously engaged in the vocation during that time.

In an affidavit submitted on appeal, Sea Org recruitment officer Samuel Scelza states:

The process of becoming a member of the Sea Organization is highly demanding and includes the following:

a) Application: The application procedure includes a list of basic qualifications which excludes anyone whose past history or present circumstances would make them unsuited or unsuitable to the religious life.

b) Initial Interview: The applicant is interviewed by a Sea Org member and advised of the commitment and dedication required, and interviewed to further verify basic qualifications.

c) Lifetime vow: The applicant signs the "Sea Org Contract," making a lifetime vow to serve the religion. This does not make the person a Sea Org member. It allows the person to enter as a novice.

d) "Project Prepare": In most cases, the applicant works out a preparatory project of specific tasks that must be completed before he can commence his vocation. This usually involves the settling of any ongoing obligations and responsibilities. In some cases this may take a few weeks. In other cases, it may take years.

e) Provisional status as a novice – the "Estates Project Force": The first step for every applicant when he or she arrives to begin his vocation in the Sea Org is a program called the "Estates Project Force," or "EPF." . . .

f) Fitness Board: Before graduating from the EPF, every novice's acceptance into the Sea Org must be individually reviewed by a Fitness Board normally composed of the Chaplain and four other church executives (all Sea Org members). Any with superficial or incomplete commitment are not accepted. Any whose progress in scriptural studies is inadequate are not accepted. Those who are accepted graduate from the EPF, affirm their vows in a "swearing-in" ceremony, and commence their duties as full Sea Org members.

The sequence and form of these steps may vary slightly. . . . Regardless of the sequence, these elements will always be present.

The available documents and affidavits show that it is possible for a Sea Org recruit to complete the first five steps of the process, only to fail at the Fitness Board stage. Therefore, we shall consider any alien who has completed part of the process, but who has not passed the Fitness Board, to be a Sea Org recruit rather than a Sea Org member. The distinction is important because, [REDACTED] states: "All employees of [the petitioning entity] are either full members of the Sea Org, or Sea Org recruits who are participating in the EPF program." By

this statement, [REDACTED] acknowledges that employment by the petitioner is not, by itself, proof that a given employee is a full member of the Sea Org. A "recruit" who has not completed all of the necessary steps to become a member could, conceivably, be found ineligible for membership, and it would clearly be a mistake to provide permanent immigration benefits to such a recruit based on a membership that will never be granted. Therefore, to be eligible for special immigrant religious worker classification as of the petition's filing date, the alien must have passed the Fitness Board no later than two years prior to that filing date.

Materials submitted on appeal show that the beneficiary completed her Sea Org application form on May 20, 1997, shortly after she signed the Sea Org contract. Her Fitness Board certificate is dated September 23, 1998, nearly four years before the petition's filing date.

The remaining issue in the director's decision concerns the petitioner's support of the beneficiary. 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.

Payroll records submitted by the petitioner demonstrate that the petitioner employs more than 100 workers, but the petitioner has nevertheless provided a copy of an independent auditor's report, indicating that the petitioner had \$32,440,904 in "cash and cash equivalents" available as of December 31, 2002, an increase of nearly \$10 million from the assets available one year earlier. This amount is more than ample to meet the beneficiary's basic needs plus a nominal weekly allowance, and barring evidence of a catastrophic loss at a later date, we find that the petitioner has adequately established its ability to compensate the beneficiary at the level specified in the petition.

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.