

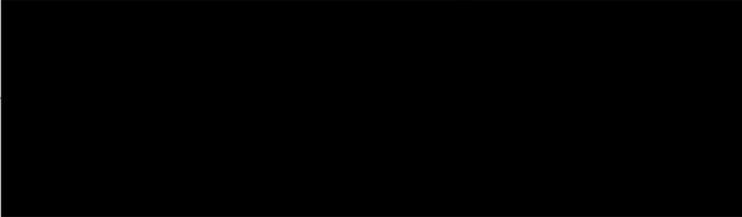
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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **MAR 30 2006**
WAC 01 024-52591

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:

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.

Robert P. Wiemann, Director
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 and the approval of the petition will be reinstated.

The petitioner is a constituent 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.

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.

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 a letter dated September 27, 2000 [REDACTED] a legal officer with the petitioning church, states:

[The petitioner] is the mother Church of all the churches of Scientology of the West U.S. and as such, has strict qualifications that must be met. 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 beneficiary] has been working in the Sea Organization since February 1998. During this time he has been holding the position of Master At Arms and has become highly trained in the ethics and confessional technology of the Church.

The letter quoted above is on the letterhead of the petitioner's [REDACTED] Los Angeles, California. That same address (but not the name of the American Saint Hill Organization) appears on the original Form I-140 petition.

The director concluded that the petitioner did not adequately describe the beneficiary's duties, and 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.

[REDACTED] 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 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 October 2, 2000 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 February 25, 1998. At the bottom left corner appears the typewritten addendum "Duplicate of Original," attested by [REDACTED]

In the notice of intent to revoke, dated December 10, 2003, the director stated: "the record appears to contain discrepancies regarding the date the beneficiary became a member of Scientology." The director expressed concern that there was no evidence that the beneficiary had taken vows. In response, Rev. [REDACTED] another of the petitioner's legal officers, states that the beneficiary "joined the Sea Organization on February 25, 1998," the date the beneficiary signed the aforementioned contract. Rev. [REDACTED] stated that the beneficiary's "vows are referred to in the Sea Organization contract."

The director, in revoking the approval of the petition on October 8, 2004, observed that the Sea Org "Contract of Employment" is not a decisive instrument of membership in the Sea Org, and that "[t]he petitioner submitted no documentary evidence to show that the beneficiary is in fact a full member" of 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 October 2, 2000 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 April 16, 1998. This indicates that the beneficiary was a full member of the Sea Org for more than two years prior to the petition's October 2000 filing date (although he did not, as claimed, become a full Sea Org member on February 25, 1998).

With regard to the continuity of the petitioner's employment, the director also stated that amounts shown on the beneficiary's Form W-2 Wage and Tax Statements show that "the beneficiary worked approximately 31 weeks in 1999." This conclusion is based on the assumption that the petitioner paid the beneficiary \$50 per week. While the petitioner was paying the beneficiary \$50 per week as of the October 2000 filing date, weekly pay records (submitted in response to a February 2001 request for evidence, issued prior to the initial approval of the petition) shows that the beneficiary typically received \$25 per week until May 2000, at which point a typical week's pay rose to \$50. The records show payments to the beneficiary at regular intervals. Thus, the amount on the 1999 Form W-2 is due to lower weekly wages rather than a major, disqualifying interruption in the beneficiary's work.

One issue remains. In the notice of intent to revoke, the director stated: "[T]he petitioner claimed the beneficiary worked for the [redacted] during a portion of the requisite two-year period. Although it claimed this organization was a branch of the [petitioning church], the petitioner submitted no documentary evidence to support such a claim." In the subsequent notice of revocation, the director repeated the assertion that the petitioner had not established the link between the petitioning church and the [redacted]

It is significant that the director, elsewhere in the revocation notice, relied on information from the beneficiary's Form W-2 statements (as discussed above). These forms show the beneficiary's address as [redacted] which is the same address shown on the [redacted] letterhead used in the initial filing of this petition. That letterhead also included the name of the petitioning church. The director did not explain why these materials were not facially credible. The aforementioned payroll records account for the entire qualifying period.

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 sustained that burden. Accordingly, the decision of the director revoking the approval of the petition will be withdrawn and the approval of the petition will be reinstated.

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