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U.S. Citizenship  
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Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

**MAY 15 2006**

WAC 03 250 53840

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 (AAO) on appeal. The appeal will be sustained and the petition will be approved.

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.

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 September 3, 2003, [REDACTED], a personnel officer with the petitioning church, states:

[The beneficiary] became a Sea Organization Member in 1996 and worked at the Church of Scientology in Milano, Italy. In September 2000 she came to the United States and took a position where she was responsible for ensuring that Church scriptures were [followed] properly in particular areas. . . .

[The petitioner] has staff qualifications requiring Sea Organization membership. .

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 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.

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 September 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 petitioner's initial submission includes an untranslated copy of a document, in the Italian language except for the legend "Sea Organization," signed by the beneficiary and dated August 27, 1996. A subsequently-submitted translation reveals this document to be a "Sea Organization Contract of Employment," in which the beneficiary pledged her service to the Sea Org "for the next billion years."

The director, in denying the petition, 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 September 5, 2003 and continuously engaged in the vocation during that time.

In a supplement to the appeal, the petitioner submits copies of church documents, one of which indicates that the beneficiary became a Sea Org Petty Officer, Third Class, in 1997. That document is dated July 29, 2002, and thus is not contemporaneous evidence that predates the qualifying period. Various surveys and questionnaires from 2000 predate the qualifying period, but they do not identify the beneficiary as a Sea Org member. Finally, an Italian document mentions the beneficiary and the Sea Org, but the document is undated and lacks the translation required by 8 C.F.R. § 103.2(b)(3). These documents do not establish first-hand that the beneficiary was a full Sea Org member as of September 2001, but one key document, not prepared specifically for the purpose of this petition, does establish the beneficiary's membership well before the filing date, and it refers to the beneficiary as having been a member for several years.

The above evidence is fragmentary at best, and does not directly establish the continuity of the beneficiary's religious work throughout the qualifying period. We now turn to other evidence in the record.

On the Form I-360 petition, the petitioner answered "no" to the question: "Has [the beneficiary] ever worked in the U.S. without permission?" Thus, the petitioner has asserted, under penalty of perjury, that all of the beneficiary's work in the United States has been duly authorized by law.

The beneficiary's passport shows that the beneficiary received an R-1 nonimmigrant religious worker visa on August 8, 2000, and arrived in New York, New York, 13 days later on August 21, 2000. The visa does not specify the church where the beneficiary was authorized to work, and the New York entry stamp does not place the beneficiary in California at the time. The petitioner's initial submission includes documentation showing that the Church of Scientology Flag Service Organization (FSO), in Clearwater, Florida, applied for an extension of the beneficiary's R-1 status; the approval notice reads "Valid from 08/20/2002 to 08/19/2004." This evidence indicates that, during the last year of the qualifying period, the beneficiary was authorized to work for the FSO in Florida, not the petitioner in California. The petitioner and the FSO are separate corporations with different Employer Identification Numbers, and authorization to work for one church entity in Florida does not constitute

permission to work for a different church entity in California. We note that 8 C.F.R. § 214.2(r)(3)(ii)(E) requires the submission of the name and location of the specific organizational unit of the religious organization for which the alien will be providing services within the United States. 8 C.F.R. § 214.2(r)(6) states that any unauthorized change to a new religious organizational unit will constitute a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act. Thus, if the beneficiary was authorized to work for the FSO in Florida, and transferred to the petitioner in California without a new, approved Form I-129 nonimmigrant petition, the beneficiary failed to maintain lawful status and worked without authorization.

On September 11, 2003, the director instructed the petitioner to submit “evidence of the beneficiary’s work history” throughout the qualifying period, including “the employer’s name” and copies of payroll documents such as Form W-2 Wage and Tax Statements. In response, [REDACTED], a legal officer with the petitioning church, offers general statements about the beneficiary’s work for the petitioning entity. [REDACTED] does not even mention the FSO in Florida, let alone explain when the beneficiary moved from Florida to California. [REDACTED] claims that the petitioner’s response includes “A letter from the staff dentist . . . showing that [the beneficiary] has received dental treatment since March 2002,” which was five months before the FSO filed an I-129 petition indicating that the beneficiary would be working in Florida.

The record, however, contains no letter that matches [REDACTED] description. Instead, [REDACTED] states “I have known [the beneficiary] as a staff member of [the petitioner] since October 2002,” and first treated the petitioner on December 9, 2003 (one day before the date of the letter). [REDACTED] the petitioner’s director of domestic service, states: “My department has been servicing [the beneficiary] from within this Department during the times of September 5, 2001 – September 5, 2003.” These two letters, taken together, indicate that the beneficiary was at the petitioning church in California continuously from September 2001 through December 2003. Consistent with this claim, the petitioner has submitted copies of Form W-2 Wage and Tax Statements, indicating that the petitioner paid the beneficiary \$504.81 in 2000, \$250.02 in 2001 and \$858.13 in 2002. The record contains no Forms W-2 issued by the FSO named on the beneficiary’s R-1 visa documentation. The petitioner’s December 2003 submission, by itself, does not contain any mention whatsoever of the FSO in Clearwater, Florida.

On the Form I-360 petition, the petitioner had indicated (under penalty of perjury) that the beneficiary has never worked in the United States without permission. From August 2002 to August 2004, the beneficiary was only permitted to work for the FSO in Clearwater, Florida; work for any other church organization, including the petitioner, would violate the beneficiary’s status and amount to unauthorized employment. Thus, the petitioner has set forth two competing claims. The petitioner asserts that the beneficiary never worked without authorization, but the petitioner also indicates that the beneficiary was in California rather than Florida. These two claims, logically, cannot possibly both be true.

The director, in denying the petition, noted the terms of the beneficiary’s nonimmigrant visa, and stated “the record contains no evidence that the beneficiary was authorized to work for [the petitioner]. Because the petitioner indicated that the beneficiary has never worked illegally in the United States, it is unclear whether the beneficiary could have been working for the petitioner during the entire requisite two-year period.” The director added that the Forms W-2 submitted by the petitioner are not consistent with weekly payments of \$50.00 as initially claimed. Such weekly payments would yield \$2,600.00 per year. As it stands, the three years’ payment

combined add up to less than \$2,600.00. Therefore, the director determined, this very significant shortfall calls into question the claim that the beneficiary worked continuously throughout the qualifying period.

On appeal, counsel argues that the petitioner has met its burden of proof by submitting evidence of the beneficiary's R-1 nonimmigrant status, Forms W-2, and other documentation. Counsel does not acknowledge, much less rebut, the director's specific concerns regarding those very documents, despite having spent the better part of a year requesting a series of one-month extensions before submitting the appellate brief.

Because the director did not fully discuss the confusion and sometimes contradictory statements that various church personnel have made regarding the beneficiary's past experience, the AAO issued a request for evidence on January 24, 2006. In this notice, the AAO explained why some claims were in conflict with others, thus leading to questions of credibility. The AAO advised the petitioner that the appeal would be dismissed unless the petitioner submitted credible, thorough, first-hand, contemporaneous evidence to show where the beneficiary actually was during the qualifying period.

The petitioner has responded to the AAO's notice. The petitioner has submitted copies of Forms W-2 showing that the FSO paid the beneficiary \$2,592.41 in 2001 and \$2,364.24 in 2002, which is consistent with the beneficiary having spent most of both years in Clearwater. The 2001 form indicates that the beneficiary resided in Clearwater. The 2002 form shows a Los Angeles mailing address for the beneficiary, indicating that, by early 2003 (when the form would have been issued), the beneficiary had transferred to the petitioning church. The petitioner has also submitted copies of weekly payroll records to corroborate the figures on the Forms W-2, as well as affidavits from FSO officials.

Weekly payroll records from the petitioning church show that the petitioner paid the beneficiary during the first months of 2001 and the last months of 2002, which is fully consistent with the Forms W-2 and payroll records from the FSO. The petitioner has also submitted copies of the beneficiary's Form W-2 and payroll records from 2003, showing the beneficiary's continuous employment there throughout the year.

In a new affidavit, [REDACTED] states that, during 2001 and 2002, the petitioner "was not aware at that time of any requirement to report the temporary assignment of a Sea Organization member within the Church," which explains why the petitioner did not file new I-129 petitions to authorize the beneficiary's transfers between California and Florida. This statement indicates the petitioner did not willfully provide false information when the petitioner indicated that the beneficiary had never worked in the United States without authorization.

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.