U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

C1

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 1 3 2004

IN RE: Petitioner: [redacted]
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.

Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The director's decision will be withdrawn and the case will be remanded for further action.

The petitioner is the mother church of an international religious organization. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services in Hubbard Guidance Center Assistance. The director determined that the petitioner had not established that the beneficiary works in a qualifying religious occupation.

On appeal, the petitioner's legal officer asserts that the beneficiary performs religious functions for the Sea Organization, a religious order of the petitioning church.

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 Code of 1986) at the request of the organization in a religious vocation or occupation; and
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> (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 issue in the director's decision concerns the nature of the beneficiary's work. 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.
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> *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 director, in denying the petition, discussed the meaning of "traditional religious function" and other aspects of working in a religious *occupation*. The petitioner, on appeal, asserts that the beneficiary works for a religious order, which is more akin to working in a religious *vocation*, which, in turn, has its own separate eligibility criteria. The petitioner has submitted a copy of a contract, signed by the beneficiary, pledging one billion years of service to the Sea Organization. The beneficiary's living and working conditions (unsalaried, living communally with other members of the Sea Organization) are also consistent with a religious vocation.

Other materials provided by Scientologist churches, however, prevent the finding that one takes up a religious vocation merely by signing the one billion year contract with the Sea Organization. The Church of Scientology has submitted, for our consideration, portions of an essay entitled "A Contemporary Ordered Religious Community: The Sea Organization," by J. Gordon Melton. The essay is a chapter in *New Religious Movements and Religious Liberty in America* (Derek H. Davis and Barry Hankins, eds., 2nd ed., 2003). The essay is also available online at http://www.cesnur.org/2001/london2001/melton.htm. The essay is not an official church document, but by submitting the essay into evidence without any disclaimer, the Church of Scientology has effectively endorsed the statements therein. Mr. Melton states:

> The process of joining the Sea Org has become somewhat institutionalized. In most instances, it begins with a public meeting in a Scientology church facility in which a Sea Org representative presents a profile of the work of the organization and invites interested attendees to consider joining. . . .
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> At the close of the meeting, those who express an interest in the Sea Org are invited to consider making an initial commitment in the form of signing what has come to be known as the billion-year "commitment." This brief document is actually a letter of intent of offering oneself for service in the Sea Org and to submit to its rules. . . .
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> After the signing of the commitment document, which is largely of symbolic import, the individual is given a period of time to consider their decision. . . . I have talked to members who waited as long as three or, in one instance, even six years before taking the next step which is to report to the Sea Org's induction program, called the Estates Project Force (EPF). . . .
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> The completion of the EPF program takes from two weeks to several months. . . . Included in the program is a rigorous daily routine of work and study that introduces people on an experiential level to the nature of the commitment being asked of them. . . .
>
> Following the completion of the EPF program, the recruit makes a final decision to continue, church personnel make a final assessment of the recruit's worth to the organization, and the person is accepted into the Sea Org. If the person has not already done so, he or she now participates in a formal swearing-in ceremony that includes the reading of the "Code of a Sea Org Member," sentence-by-sentence, and his or her verbal assent to each clause. . . .
>
> Each Sea Org member reaffirms that acceptance in a formal ceremony annually on 12 August, the anniversary of the founding of the Organization.

The above excerpt indicates that the billion-year "Contract of Employment" (Contract) is largely symbolic, and that signing it does not make the signer a member of the Rather, the essay states that one is not a Sea Org member until after one has completed the EPF program and ceremonially read the "Code of a Member." This statement is corroborated by the existence of another document, the "Declaration of Religious Commitment and Membership in the S (Declaration), which is considerably more involved than the billion-year Contract. The Declaration contains several legal clauses that spell out the nature of the member's obligations to the church.[1] The Declaration submitted to Citizenship and Immigration Services bears the insignia of the C ut the Declaration contains no other reference to this subdivision except in its preamble. The body of the Declaration appears, from its wording, to apply to all members of the Sea Org.

Given the description of the process of training and evaluation that one must undergo before the church will accept a candidate as a member of the Sea Org, and given various general similarities between the life of a Sea Org member and that of members of other religious vocations, it appears that full membership in the Sea Org (following the EPF program, reading of the "Code of a Sea Org Member," and execution of the Declaration) can qualify as a religious vocation.

If an individual has signed the Contract, but has not undergone the remainder of the process described above, then that individual has not been shown to be in a religious vocation. Such an individual might, however, qualify as a worker in a religious occupation, depending on the nature of the duties that individual has undertaken.

In this instance, the petitioner has submitted a signed copy of the Contract, dated May 8, 1997, but no Declaration or other evidence to show that the beneficiary has formalized her commitment to the petitioner. We note that at the bottom of the Sea Org Contract is a space marked "Have the r perform the In Ceremony," followed by lines marked "Your Signature" and "Recruiter's Signature." These lines are blank, suggesting that while the beneficiary signed the Contract, she was never sworn in.

The record contains a certificate, indicating that the beneficiary qualifies as a "Volunteer Minister." According to the church's own materials, there are over 14,000 volunteer ministers,[2] whereas Sea Org membership is closer to 5,000.[3] Clearly, one need not be a Sea Org member to be a volunteer minister. Other materials seem to indicate that Sea Org members outrank volunteer ministers. The beneficiary's Volunteer Minister Certificate is dated April 23, 2002, just weeks before the petition's filing date and nearly five years after the beneficiary signed the ontract.

Because there is no evidence that the beneficiary's commitment to the Sea Org extends beyond her unsworn signature on an admittedly "symbolic" document, the evidence is insufficient to warrant a finding that the beneficiary is a member of a religious order, practicing a religious vocation.

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[1] The "Declaration of Religious Commitment and Membership in the Sea Organization, a Scientology Religious Order" includes a "Pledge of Religious Commitment" which states, in part, "each Sea Organization member considers himself/herself a volunteer to create a better world, and understands that he/she is not an employee, i.e., is not entitled to receive secular benefits such as minimum wage or overtime compensation." The assertion that a Sea Org member "is not an employee" appears to conflict with the "Contract of Employment," which refers to "employment" both in its title and in the body of its text. As noted above, the essay "The Sea Organization" states that members "must . . . meet any employment laws of the land," which is another reference to "employment."

[2] Source: http://www.scientology.org/en_US/news-media/news/2002/020301.html.

[3] Source: http://www.scientology.org/en_US/news-media/faq/pg026.html.

A church staff worker who has not made the full commitment to the Sea Org could still qualify as a worker in a religious occupation, depending upon the nature of the duties undertaken. The director had determined that the beneficiary's duties in Guidance Center Assistance constitute "a wholly secular position," amounting to the administrative task of "preparing and making information available to assist Scientology parishioners."

On appeal, the petitioner's legal officer, Caroline L. Heinrich, states:

> [The beneficiary's] post title . . . made her religious duties appear to be merely clerical; when in fact she is not a clerk or an administrative assistant, she is someone who is instrumental in seeing to it that Church staff members progress on their spiritual quest for greater spiritual awareness and enhancement. Auditing (Scientology religious counseling) is one of the two main religious sacraments in the Scientology religion.
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> In order to properly conduct auditing, it requires many Church scriptures to be followed prior to the time when the actual auditing occurs and [the beneficiary] makes sure that those Church scriptures are followed. Without [the beneficiary] conducting her religious duties, auditing could not occur and Church staff would not be able to receive the spiritual enhancement and awareness which they are seeking. . . . Someone with only a slight familiarity with Scientology scriptures could not perform her duties. . . .
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> As part of her functions as a [redacted] member, [the beneficiary] is sometimes called upon to translate religious scriptures into Japanese, which is crucial in the expansion of the Scientology religion. Just recently she spent several weeks working on a translation project intensively. She is one of few people available and qualified to so translate those materials. It requires more than merely an understanding of English and Japanese, it also requires a familiarity with the Scientology scriptures to know the nuances which do not necessarily translate easily from English into any other language.

The regulations specifically include "religious translator" in the list of qualifying religious occupations. From the description provided, which is consistent with earlier descriptions of the beneficiary's work, it appears that the beneficiary's current work can qualify as a religious occupation. If the beneficiary was living under the same conditions as a full-fledged [redacted] member, receiving nominal stipends in place of salary, this by itself does not mean that the beneficiary was not, for our purposes, employed. The Board of Immigration Appeals has previously acknowledged that a religious worker's compensation need not take the form of fixed salary payments. *See Matter of Hall*, 18 I&N Dec. 203 (BIA 1982).

Review of the record, however, reveals another issue that appears to prevent the approval of the petition. The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work. This two-year requirement derives directly from the statute, cited above. The petition was filed on May 8, 2002. Therefore, the petitioner must establish that the beneficiary was continuously carrying on the same religious occupation in which the petitioner now seeks to engage her, throughout the two years immediately prior to that date. The beneficiary's work throughout the entire two-year qualifying period should be essentially the same as her intended future work, because the

regulations require that the beneficiary performed "the" religious work during that period. The article "the" shows that it cannot suffice for the beneficiary simply to have been somehow involved, in some other capacity, with the petitioning church during that time.

In a sworn affidavit accompanying the initial petition, Gat Brown, personnel officer with the petitioning church, states:

> [The beneficiary] was preparing and making information available to assist Scientology parishioners. . . . This included translation of Church materials into Japanese. She did this until June 2000. . . .
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> From July 2000 to February 2001 (the beneficiary) received religious training and pastoral counseling at the [petitioning church]. . . .
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> In March 2001 [the beneficiary] continued her duties as described . . . above and has been doing it ever since.

Gat Brown has described an eight-month interruption in the beneficiary's duties, comprising fully one-third of the two-year qualifying period. The Board of Immigration Appeals found that an alien who worked part-time as a minister, while still undergoing training, was not continuously engaged in the vocation of a minister. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980). The same reasoning applies here, to an even greater degree, as the wording of the above affidavit indicates that the beneficiary completely ceased to perform her duties for eight months (working "until June 2000," and resuming her duties "[i]n March 2001").

The petitioner's 2002 training as a volunteer minister, noted earlier, raises the question of whether the petitioner intends to change the nature of the beneficiary's duties yet again. Also, the fact that the beneficiary required eight months of training, as recently as June 2000, suggests that, prior to that date, the beneficiary was either not fully trained for her current position, or else the petitioner was training her to undertake new duties. Neither of these options strongly suggests stability in the beneficiary's current occupation. If it is the beneficiary's intention one day to undertake full commitment to the Sea Org, then the beneficiary seeks to enter the United States to engage in a religious vocation, and the statute and regulations would require two years of experience in the vocation before the filing of the petition.

If the beneficiary's work was interrupted for eight months, or if the beneficiary's duties have changed or will soon change significantly, or the beneficiary seeks to move from an occupation to a vocation, then the two-year requirement would appear to prevent the approval of this petition. The director, in denying the petition, did not address this issue, and therefore the petitioner has not yet had an opportunity to respond. Because the director failed to address this issue in the previous decision, the director must address it now. The new decision rendered by the director must take into consideration the question of whether the beneficiary has continuously worked in a religious occupation throughout the two-year period ending May 8, 2002.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.