



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
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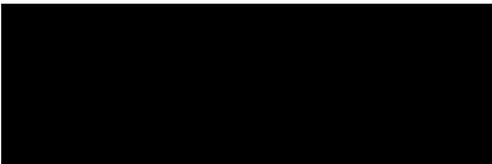
Office: CALIFORNIA SERVICE CENTER

Date: SEP 28 2005

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:



PUBLIC COPY

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, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is the publishing arm 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, a religious order of the Church of Scientology. The director determined that the petitioner had not established that: (1) the petitioner qualifies as a tax-exempt religious organization; (2) the beneficiary had the requisite two years of continuous work experience immediately preceding the filing date of the petition; or (3) the beneficiary's position qualifies as either a religious occupation or a religious vocation.

The first issue we shall address concerns the petitioner's tax-exempt status. 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

According to an October 1, 1993 determination letter from the Internal Revenue Service (IRS), the petitioner's tax-exempt status derives from classification not under section 170(b)(1)(A)(i) of the Internal Revenue Code of 1986 (the Code), which pertains to churches, but rather under section 509(a)(3) of the Code, as "an organization which . . . is organized . . . exclusively for the benefit of . . . one or more specified organizations described in paragraph (1) or (2)" of section 509(a) of the Code.

The director, in denying the petition, argued that the petitioner is not classified as a "church" under section 170(b)(1)(A)(i) of the Code, and therefore it cannot be considered to be a qualifying tax-exempt religious organization. On appeal, counsel argues that the director has misinterpreted the pertinent regulations, and asserts that an entity can be a qualifying religious organization even if it is not a "church" *per se*. Counsel cites a memorandum from William R. Yates, Associate Director of Operations, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003). That memorandum affirms that an entity need not be a "church," so long as it is tax exempt with a qualifying religious affiliation and function. In this instance, the record shows that the petitioning entity is a 501(c)(3) non-profit organization that exists solely for the benefit of the Church of Scientology. From the available evidence, we concur that the petitioner is a qualifying tax-exempt religious organization within the scope of the relevant statute and regulations, and we hereby withdraw the director's finding to the contrary.

Next, we shall discuss the issue of whether the beneficiary seeks to work in a religious occupation or a religious vocation. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

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 8, 2003, [REDACTED] the petitioner's legal officer, describes the beneficiary's work:

Since following her calling as a Sea Organization member, [the beneficiary] has gotten the Scriptures of the Scientology religion into the hands of hundreds of people personally and through charitable causes that she has participated in. As a volunteer minister, she continuously helps people to improve themselves to lead a more successful life. She helps with accounting and has assisted in establishing methods to vastly increase dissemination and distribution of the Scriptures. Since becoming a Sea Organization member, [the beneficiary] has continued studying the Scriptures and she is currently engaged in study to become an ordained minister of our Church. . . .

[The petitioner's] staff are all members of the Sea Organization. . . .

Sea Organization members devote their lives to their religion; they live in a community of other Sea Organization members and wear specific uniforms. Sea Organization members are provided with their meals, housing, clothes, medical and dental care, transportation and a small weekly allowance, currently \$50.00 per week, and occasional small bonuses.

The director concluded that the beneficiary's accounting duties are inherently secular, and thus do not constitute a qualifying religious occupation, and that the petitioner has failed "to show that the Sea Organization has a governing structure, a formal legal organizing document, 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," the director determined that there is insufficient evidence to conclude that the Sea Organization is a religious order, whose members qualify as workers in a religious vocation.

CIS has obtained from the Church of Scientology various documents and affidavits discussing the Sea Organization. Upon careful consideration of these materials, the AAO is satisfied that the Sea Organization 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 Organization 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 12, 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).

In her September 8, 2003 letter, mentioned above, Ms. [REDACTED] states: "In May 1999, [the beneficiary] joined our religious order called the Sea Organization and on May 10, 1999, she was admitted to the United States on an R-1 visa to begin her vocation as a Sea Organization member." She does not indicate the procedure by which the beneficiary joined the order. The record contains copies of several certificates, dated between 1989 (when the beneficiary was ten years old) and 2002, as well as a "Sea Organization Contract of Employment," which reads, in part, "I contract myself to the Sea Organization for the next billion years," dated May 10, 1999. The date on the contract, therefore, matches Ms. [REDACTED] reference to May 1999. In a subsequent letter, dated December 8, 2003, Ms. [REDACTED] indicates that the beneficiary "became an ordained minister in November, 2003."

The petitioner has submitted payroll documentation, showing that the petitioner paid the beneficiary the following amounts in the years leading up to the filing date:

1999	\$5,933.08
2000	\$13,482.55
2001	\$17,546.26
2002	\$10,762.04

The director, in denying the petition, stated: "The petitioner submitted no documentary evidence to show that the beneficiary is in fact . . . a full member" of the Sea Organization. The director determined that the beneficiary has not continuously performed the same duties, as shown by her ordination and by the significant decrease in the beneficiary's compensation from 2001 to 2002. The director also turned to the issue of the beneficiary's training certificates:

[D]oubt has been cast on the authenticity of various certificates submitted with the petition. . . . The certificate of "Hubbard Trained Scientologist" was allegedly issued in 1997; the certificate of "Hubbard Recognized Scientologist" was allegedly issued in 1996. However, the certificates were copyrighted in 1998. As such, they could not have been issued in 1997 or 1996. The certificate of "Hubbard Qualified Scientologist Course" was allegedly issued in 1989. However, the certificate was copyrighted in 1996. As such, it could not have been issued in 1989.

On appeal, the petitioner submits a new affidavit from Ms. [REDACTED] who states that the petitioner "paid minimum wage until June 28, 2002. At that time, [the petitioner] converted from minimum wages to providing its staff, including [the beneficiary], with meals, housing, clothes, medical and dental care and transportation in addition to \$50.00 per week spending allowance." This assertion explains the drop in the beneficiary's compensation. When this is considered in conjunction with other new evidence (to be discussed below), we conclude that the petitioner has satisfactorily resolved this apparent discrepancy.

As noted above, the petitioner has implied that the beneficiary joined the Sea Organization no later than May 10, 1999 (the date she signed the contract and entered the United States "to begin her vocation as a Sea Organization member). The director questioned whether the contract is a definitive instrument of membership in the order. On appeal, the petitioner submits materials conceding that contract is a "symbolic" document, and that there are additional steps required to join the Sea Organization, such as completion of the Estates Project Force. In a new affidavit, [REDACTED] the petitioner's vice president of personnel, states that the beneficiary "participated in all of the courses and completed all the requirements of the EPF in June 1999. She was found eligible and was accepted for full Sea Organization membership at that time." Ms. [REDACTED] does not explain why the petitioner had previously claimed that the beneficiary joined the order no later than May 10, 1999.

With regard to the process of joining the Sea Organization, the AAO has received an affidavit from Samuel Scelza, a personnel officer for the Church of Scientology Flag Service Organization, who 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.

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 Organization (as opposed to a recruit, who is not a full member). Mr. [REDACTED] and other witnesses, have also indicated that church organizations generally maintain records to show when a given member passed review by the Fitness Board. 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 12, 2003.

In a supplement to the appeal, the petitioner submits copies of church documents, including a document headed “CSW / FITNESS BOARD FINDINGS,” indicating that the beneficiary passed the Fitness Board on June 25, 1999, the same day she completed “Product Zero.” This indicates that the petitioner was a full member of the Sea Organization for more than four years prior to the petition’s September 2003 filing date.

As for the anachronistic dates on some of the beneficiary’s training certificates, counsel states that the director “has overlooked the fact that the questioned documents were clearly marked as copies prepared from church records.” Each of the documents in question is, in fact, marked “Copy From Church Records,” with the signature of [REDACTED] (identified elsewhere as “Director of Validity”). Counsel contends that these documents do not purport to depict the original certificates from 1989, 1996 and 1997, but rather that they are “copies” in the sense that they are newly-executed documents that relay older information from church records. Corroborating this interpretation of the word “copies” is a newly submitted document, indicating that the beneficiary “successfully

completed the requirements necessary for PRODUCT ZERO on June 25, 1999.” The document also states “Issued at: Los Angeles, CA, on September 22, 2005.” This demonstrates that the petitioner does, on occasion, reconstruct such certificates based on information in church records.

The petitioner also submits an affidavit from [REDACTED] secretary of the Fitness Board of the Church of Scientology Western United States. Mr. [REDACTED] states:

Because Fitness Board authorization and completion of Product Zero are requirements to assume a position in a Church as a Sea Org member, and it is well recognized as such, a formal certificate is not necessary and has not always been issued. . . . In instances where a certificate was not issued at the time of completion the Office of Certificates and Awards and Fitness Board are able to verify the completion from Church records.

This statement further supports the above interpretation of the source of the “copies.”

We acknowledge the director’s concern about the apparent anachronisms in the certificates, but we find the petitioner’s explanation to be credible in the context of the materials submitted. We further note that the regulations provide for situations in which the director has serious reservations about the authenticity or reliability of a copy of a document. 8 C.F.R. § 103(b)(5) gives the director the discretion to request the *original* documents when copies are disputed. By signing the Form I-360 petition, the petitioner has agreed, under penalty of perjury, to provide any information that the director deems necessary for the adjudication of the petition. If a given petitioner refuses to provide original documents that are material to the proceeding, then the director can deny the petition pursuant to 8 C.F.R. §§ 103.2(b)(5) and (14). We note that 8 C.F.R. § 103.2(b)(5) requires that, if a petitioner does not provide original documents to substantiate a previously submitted copy, the petition shall be denied; there shall be no appeal; and the petition cannot be reopened at a later date based on the subsequent availability of the requested original. That same regulation also requires the director to return the requested original documents after the petition has been adjudicated; the director shall not be permitted to retain the original records indefinitely.

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.