



U.S. Citizenship
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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAY 24 2006
WAC 03 163 53568

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted. The AAO's decision will be withdrawn, and the petition will be approved.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. The director also questioned the authenticity of a key document reproduced in the record.

The AAO found that the beneficiary's position qualifies as a religious vocation, and that a plausible explanation existed for the documentary discrepancies. The AAO affirmed, however, the director's finding that the petitioner had not adequately established the beneficiary's required past experience.

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)(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 experience in the religious vocation, professional religious work, or other religious work. The petition was filed on May 5, 2003. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a Sea Org member throughout the two years immediately prior to that date.

In its previous decision, the AAO found that the petitioner had satisfactorily established that the beneficiary became a full Sea Org member in 1997. The AAO also, however, noted documents in the record showing that the beneficiary did not work for the petitioner in 2002. Rather, the beneficiary worked for another church entity, the Church of Scientology Western United States (CoSWUS), which paid the beneficiary \$1,164.96 in 2002. In 2003, the petitioner paid the beneficiary \$2,035.35. Neither amount is not consistent with the petitioner's assertion that the church has paid the beneficiary an allowance of \$50 per week (which would be \$2,600 per year). The AAO also noted that the petitioner had submitted weekly payroll records for August 2003, but not for the qualifying period. The AAO stated:

We acknowledge that the "allowance" is not an hourly wage or salary. The issue is not over payment of an hourly wage; the issue is the obvious contradiction between the claim that the beneficiary's "remuneration is *and has been* approximately \$50.00 spending allowance weekly" (emphasis added) plus bonuses, and Forms W-2 showing that the beneficiary has received substantially less than that amount in both 2002 and 2003. This contradiction raises obvious concerns regarding the credibility of Ms. [Jeanne M.] Gavigan's unsupported claims, and yet another letter from the same source cannot dispel those concerns. . . .

Because the beneficiary is said to have spent most of the qualifying period at the CoSWUS and not at the petitioning church, unsubstantiated assertions from officials of the petitioning church cannot suffice to establish the continuity of the beneficiary's work at the CoSWUS. The low amounts shown on the beneficiary's Forms W-2 are consistent with a finding that there were significant interruptions in the beneficiary's work, and the petitioner has submitted nothing to overcome such a finding, despite repeated requests for evidence.

On motion, [redacted] (*née* Gavigan), a legal officer for the petitioning entity, asserts that the AAO failed to adduce evidence of a gap in the beneficiary's employment. The burden is on the petitioner to establish eligibility, not on the AAO or any other government entity to rebut unsubstantiated claims. Ms. [redacted] also admits that she had "neglected to include [the beneficiary's] brief mission at the Church of Scientology of Los Angeles" when listing the beneficiary's previous assignments. The petitioner submits documentation, including weekly payroll records, showing that the beneficiary served without interruption throughout the qualifying period. The director's requests for evidence had not specifically mentioned these weekly payroll records.

At times, the beneficiary received less than \$50 in a given week. The AAO had never discounted this possible explanation for the low total amount of payments to the beneficiary; the AAO had simply observed that it was the petitioner's burden to document such an explanation. Because the records show long periods in which the beneficiary received amounts other than \$50 per week, clearly the petitioner's assertion to the

contrary is incorrect, hence the director's and the AAO's strong preference for contemporaneous documentation rather than after-the-fact claims from officials who are not always in a position to attest from first-hand knowledge.

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 previous decision of the AAO will be withdrawn, and the petition will be approved.

ORDER: The AAO's decision of January 17, 2006 is withdrawn, and the petition is approved.