U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 29 2007

WAC 03 258 52690

IN RE: Petitioner:
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:

[redacted]

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.

for 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 The motion will be granted, the AAO's previous decision will be withdrawn and the petition will be approved.

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. The director also questioned the authenticity of key documents reproduced in the record, and found that a change in the beneficiary's employment invalidated the original job offer. The AAO withdrew most of the director's findings, but affirmed the director's finding that the beneficiary's relocation to Buffalo, New York, had invalidated the original offer of employment in Los Angeles.

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 petitioning entity is based in Los Angeles, California, and the petitioner's initial filing indicated that the beneficiary would be working there. Subsequent evidence indicated that the beneficiary had spent considerable time in Nashville, Tennessee, while under an R-1 visa that only permitted her to work in Los Angeles. The AAO, in its dismissal notice of June 2, 2006, stated:

The petitioner's response to the director's request for evidence includes a December 22, 2003 letter in which [Legal Officer] [redacted] states that the beneficiary "recently transferred to Church of Scientology of Buffalo, New York." Trish Allen, executive director of the Church of Scientology of Buffalo, confirms this in a December 20, 2003 letter. Other materials indicate that the transfer took place in November 2003.

The director stated that the petitioner had initially indicated that the beneficiary was to work at the petitioning facility in Los Angeles, and that the beneficiary's subsequent relocation is a disqualifying material change to the petition. On appeal, counsel argues that the petitioner has been and will continue to be providing religious services in Los Angeles, Nashville, and Buffalo, and that the beneficiary's precise location while providing those services is irrelevant to her eligibility. Counsel contends that, because Form I-360 need not be filed by the prospective employer of a special immigrant religious worker, the identity and location of that employer are not material to the petition.

Counsel's argument is not persuasive. . . . 8 C.F.R. § 204.5(b) states that Form I-360 must be filed with the Service Center having jurisdiction over the intended place of employment. Because of this non-waivable regulatory requirement, the intended place of employment is material to the petition. Here, the intended place of employment has changed. Buffalo lies within the jurisdiction of the Vermont Service Center, rather than the California Service Center. The petition was predicated on an offer of employment with the petitioning church in Los Angeles; that job offer, and with it the foundation of the petition, evaporated with the beneficiary's transfer to Buffalo. . . .

The principal remaining impediment [to approval] is the beneficiary's relocation outside of the California Service Center's jurisdiction. This would be remedied by the filing of a new petition with the Vermont Service Center, provided that the beneficiary remained within that Service Center's jurisdiction during the adjudication of the petition.

While the AAO intends to reverse its earlier finding, in so doing we wish to make it clear that we do not accept all of counsel's arguments on motion. Rather than have it be said that we found these particular arguments to be persuasive, we shall address and rebut them here.

On motion, counsel states that 8 C.F.R. § 204.5(b) requires only that a petition "must be **filed** with the Service Center having jurisdiction over the intended place of employment" (counsel's emphasis), and that the petitioner met this requirement because, at the time of filing, the intended place of employment was California; the beneficiary did not transfer to New York until about two months after the filing date. Counsel states: "The issue is whether [the intended place of employment] must remain constant during the pendency of the petition." When initially adjudicating a petition, Citizenship and Immigration Services (CIS) must rely on the facts and evidence as they exist at the time of filing. Material changes to these terms can alter or erase conditions conducive to eligibility. For instance, 8 C.F.R. § 204.5(g)(2) requires evidence that the prospective employer is able to pay the beneficiary's proffered wage. If the beneficiary changes employers,

then the evidence concerning the original employer's ability to pay becomes moot. The second employer cannot "piggyback" on the first employer's ability to pay. Similarly, if the original employer is unable to pay the wage, this cannot be remedied within the same proceeding by moving to a new employer that is more financially sound. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Commr. 1998); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). If the terms of employment change substantially – and the AAO believes that relocating from Los Angeles to Buffalo is a substantial change – then the appropriate response is to file a new petition in which these new terms can rightly be taken into consideration.

Counsel states: "Under the AAO's logic, a family-based petitioner would suffer loss of jurisdiction and forfeiture of priority date should he or she move while the case is pending." This proceeding, however, is an employment-based petition, not a family-based petition. More importantly, the *petitioner* did not "move while the case is pending." The petitioner stayed in the same place while the *beneficiary* transferred to a different employer. Therefore, a more apt analogy for a family-based petition would not be the petitioner's relocation, but rather the beneficiary's divorce from a petitioner in California and remarriage to that petitioner's cousin in New York. Counsel cites CIS' *Operations Instructions* at OI § 103.2q, but this provision does not address a change of employer by the beneficiary of an employment-based petition. The cited instruction refers to the transfer of a petition from one office to another, but it does not address the circumstances under which the transfer may be effected. The AAO did not deny that petitions are transferable under the proper conditions.

Counsel observes that an alien seeking classification as an alien of extraordinary ability under section 203(b)(1)(A) of the Act need not have a specific job offer, and a change of employment does not necessarily affect the validity of the petition. The evidence cited, a 1993 letter from an official of what was then the Immigration and Naturalization Service, does not address the issue of relocation from one Service Center's jurisdiction to another, and it does not relate to special immigrant religious worker petitions (which, unlike extraordinary ability petitions, require evidence of a specific offer of employment).

Having made the above points, we must acknowledge that, while the beneficiary transferred to Buffalo after the filing date, the petitioner demonstrates on motion that this transfer was temporary, as "a special project to expand the Church in Buffalo," and that, the project now being completed, the beneficiary is to be reassigned to the petitioning center in Los Angeles. By returning the beneficiary to Los Angeles, the petitioner has not introduced new qualifying conditions for the first time, thereby making novel material changes to the petition. Rather, the petitioner has restored the conditions in effect as of the initial filing. The job offer requirement concerns future activity, and a temporary relocation is not inherently disqualifying, provided the petitioner can demonstrate that the relocation is, in fact, temporary.[1]

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[1] We note, also, that even if the beneficiary were to remain in Buffalo, filing a new petition at this point would not move jurisdiction away from the California Service Center. Effective July 30, 2007, all special immigrant religious worker petitions are to be filed with the California Service Center, regardless of the location of the intended work place. *See* http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=2e39b6f2cae63110VgnVCM1000004718190aRCRD&vgnextchannel=fe529c7755cb9010VgnVCM10000045f3d6a1RCRD, visited August 14, 2007.

We stress that, while this finding resolves the job offer issue at the visa petition stage, it does not resolve or nullify any issues that may arise at the adjustment or visa application stage, with regard to violation of status. Because the AAO is not responsible for the adjudication of an adjustment application or a visa application, the AAO can make no definitive finding as to whether or not the beneficiary violated the terms of her R-1 nonimmigrant visa when she repeatedly left the initially specified place of employment in order to work for the church at other sites, far removed from the initial site. That is an issue for the Service Center or consulate to decide. The AAO can only echo the director's previously voiced concerns about the beneficiary's maintenance of lawful nonimmigrant status, which includes adherence to the terms set forth at 8 C.F.R. § 214.2(r)(6).

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 June 2, 2006 is withdrawn, and the petition is approved.