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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 22 2010

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(i)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

5 Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, the AAO will remand the petition for further action and consideration.

The petitioner is an administrative arm of the Church of Scientology. It seeks to classify the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act, to perform services as a member of the Sea Organization (Sea Org), the Church of Scientology's religious order. The director determined that the petitioner had not established that the beneficiary's intended duties are religious in nature.

On appeal, the petitioner submits a brief from counsel and copies of various supporting documents. We note that, on appeal, counsel asserts: "A Freedom of Information Act request has been made to obtain the record upon which the denial is based. . . . Accordingly, we request leave to supplement this brief within 30 days of receipt of the complete record of proceeding." The record of proceeding, as it now stands, consists entirely of the petitioner's own submissions plus the director's denial notice, a copy of which is already in the petitioner's possession. These materials constitute the entire record of proceeding, as the regulation at 8 C.F.R. § 103.8(d) defines that term. Because a Freedom of Information Act request is a separate administrative matter, and because the director did not base the decision on any evidence that has not passed through the petitioner's and counsel's hands, the AAO will not delay the adjudication of the petition to await a further brief from counsel.

Section 101(a)(15)(R) of the Act pertains to an alien who:

- (i) for the 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; and
- (ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii).

Section 101(a)(27)(C)(ii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii), pertains to a nonimmigrant who seeks to enter the United States:

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
- (II) . . . 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) . . . 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.

U.S. Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. § 214.2(r)(1) state that, to be approved for temporary admission to the United States, or extension and maintenance of status, for the purpose of conducting the activities of a religious worker for a period not to exceed five years, an alien must:

- (i) Be a member of a religious denomination having a bona fide non-profit religious organization in the United States for at least two years immediately preceding the time of application for admission;
- (ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week);
- (iii) Be coming solely as a minister or to perform a religious vocation or occupation as defined in paragraph (r)(3) of this section (in either a professional or nonprofessional capacity);
- (iv) Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and
- (v) Not work in the United States in any other capacity, except as provided in paragraph (r)(2) of this section.

The USCIS regulation at 8 C.F.R. § 214.2(r)(3) defines the term “religious vocation” as a formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia, to a religious way of life. The religious denomination must have a class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion.

The petitioner filed the Form I-129 petition on June 16, 2009. In an attestation accompanying the petition, the petitioner stated that the beneficiary’s “[d]uties consist of conducting successful campaigns which present various International Association of Scientologists humanitarian and religious projects known to all the members who then contribute to support various causes.”

The USCIS regulation at 8 C.F.R. § 214.2(r)(8)(vii) requires the petitioner to list the title of the position offered to the beneficiary. On the section of the attestation marked “Title of position offered,” however, the petitioner stated only “maintaining of current position.” The petitioner listed numerous job titles, including “financial director,” “marketing & promotion executive” and “assembly line officer,” but the petitioner did not specify which of these titles the beneficiary held. The job description that appears to match the beneficiary’s job description (quoted above) most closely is that of the public affairs executive, who “does the planning and execution of PR and events which promote the accomplishments of members and also the achievements in terms of scientology expansion.”

The director denied the petition on November 5, 2009, stating: “The beneficiary, while a [REDACTED] member, would not be employed in a religious vocation” because “the petitioner is not part of the ecclesiastical hierarchy of the [REDACTED] and does not participate in management of church affairs.” The director concluded that “the petitioner’s tax exemption does not derive [from] any religious character,” and that the petitioner “has no religious functions and the duties of all of its employees are secular in nature.”

On appeal, counsel observes that the petitioner is a tax-exempt organization, demonstrably affiliated with the Church of Scientology, rather than an independent, secular corporation. Counsel also asserts that the director has incorrectly held the beneficiary to the regulatory definition of a religious occupation, rather than that of a religious vocation. While an alien’s work in a religious occupation (as defined at 8 C.F.R. § 204.5(m)(5)) must relate to a traditional religious function, this clause does not apply to an alien in a religious vocation.

In the decision, the director did not dispute that the beneficiary is “a [REDACTED].” The director based the denial on the conclusion that the petitioner is not a qualifying religious organization. The record does not support this conclusion. We agree with counsel that the record shows the petitioner to be a tax-exempt organization with clear ties to the [REDACTED] and which exists for the sole purpose of advancing that church’s goals. Obstacles to eligibility would certainly arise if the beneficiary worked for a for-profit enterprise, or for a church-affiliated entity that claims to serve secular rather than religious ends, but neither is the case here.

Therefore, we will withdraw the director’s general finding that a [REDACTED] who works for the petitioning entity does not qualify as a worker in a religious vocation.

That being said, an additional issue requires attention. The AAO may raise additional issues that the Service Center does not identify in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The regulation at 8 C.F.R. § 214.2(r)(3) defines a “religious vocation” as a formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia, to a religious way of life. The religious denomination must have a class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion. A [REDACTED] would appear to fit this definition, but the burden is on the petitioner to establish that the beneficiary is, in fact, a Sea Org member. (The director’s conclusion that the beneficiary so qualifies is not binding on the AAO.) Therefore, the petitioner must submit appropriate documentary evidence of the beneficiary’s formal lifetime commitment to the Sea Org. The petitioner must establish eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(1). Therefore, the petitioner must show that the beneficiary was already a [REDACTED] at the time the petition was filed. Newly-created evidence will not suffice in this regard. The record contains numerous

references to extensive recordkeeping by the petitioning entity. Therefore some record of the beneficiary's [REDACTED] ought to exist, and the petitioner should provide it.

For the reasons discussed above, the director's decision cannot stand and we hereby withdraw that decision. At the same time, however, the record as it now stands does not permit approval of the petition. Therefore, the AAO will remand this matter to the director. 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.