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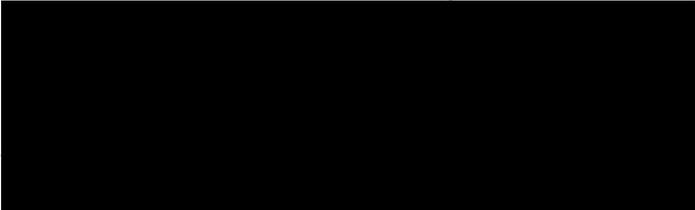
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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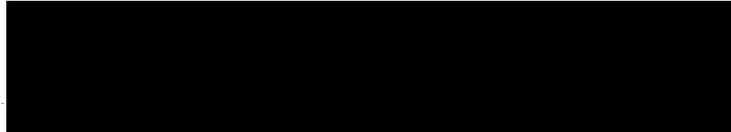
Office: CALIFORNIA SERVICE CENTER

Date: DEC 22 2005

IN RE:

Petitioner:

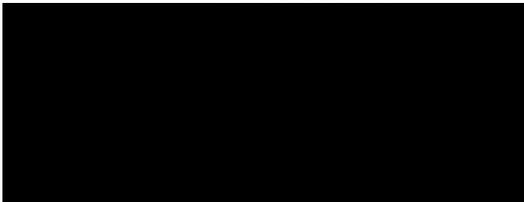
Beneficiary:



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:



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.

Maiphuson

RP 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 (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

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 religious studies supervisor. The director determined that the petitioner had not established that the beneficiary possessed the necessary qualifications for the proffered position early enough to accumulate the requisite two years of continuous work experience prior to the filing date of the petition. The director also questioned the continuity of the beneficiary's experience during the critical two-year period.

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).

First, we shall consider the issue of the beneficiary's qualifications. 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.

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.

8 C.F.R. § 204.5(m)(3)(ii)(D) requires the petitioner to submit evidence that the beneficiary is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother, or that the type of work to be done relates to a traditional religious function.

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 September 5, 2003. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying duties throughout the two years immediately prior to that date.

The director, in denying the petition, determined that the position of religious studies supervisor qualifies as a religious occupation, and that the beneficiary is now qualified for that occupation. The director, however, noted that the beneficiary completed some of the training courses for that position as late as 2002. Therefore, the director determined, the beneficiary was not qualified to be a religious studies supervisor when the two-year qualifying period commenced in September 2001.

The director failed to take into consideration the petitioner's assertion that the beneficiary is a member of the Sea Organization (Sea Org), a religious order of the Church of Scientology, in which case the beneficiary would practice a religious vocation rather than a religious occupation.

In a letter dated September 2, 2003, [REDACTED] a personnel officer with the petitioning church, states:

[The beneficiary] became a Scientologist in 1995 in Budapest, Hungary. . . . He came to Los Angeles, in September 2000 and worked in several religious positions, including that of religious studies supervisor. . . . [This] was the only work performed during this period of time. . . .

[The petitioner] has staff qualifications requiring Sea Organization membership. . . .

Sea Organization members devote their lives to their religion; they live in community with other Sea Organization members and wear specific uniforms. Their meals, housing, clothes,

medical and dental care are provided by the Church. Each member additionally receives a small weekly allowance, currently \$50.00 per week and occasional small bonuses. . . .

[The beneficiary] is a staff member of the Sea Organization, Scientology's religious order requiring a lifetime commitment. As is true for all Church staff members, the Church will provide [the beneficiary] with all food, clothing, transportation, health care and, in addition, a \$50.00 per week spending allowance.

Subsequent submissions indicate that the beneficiary joined the Church of Scientology in 1993, not 1995 as claimed above. In making this observation, we allege no fraudulent intent behind the discrepancy. We note only that the fallibility of unaided memory serves to emphasize why contemporaneous documentary evidence is generally superior to personal statements made years after the events those statements are intended to describe.

The Church of Scientology has provided various documents and affidavits discussing the Sea Org. Upon careful consideration of these materials, the AAO is satisfied that the Sea Org 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 Org 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 5, 2003 filing date. The record contains copies of several certificates, including a "Sea Organization Contract of Employment," which reads, in part, "I contract myself to the Sea Organization for the next billion years," signed by the beneficiary and dated February 23, 1995.

The director requested "evidence of the beneficiary's work history beginning September 5, 2001 and ending September 5, 2003. . . . In addition, submit evidence that shows monetary payment." In requesting documentation of the beneficiary's experience during the qualifying period, had stated: "Each experience letter must be written by an authorized official from the specific location at which the experience was gained. The petitioner may only write an experience letter for the experience gained at the petitioner's location."

In response, the petitioner has submitted copies of Form W-2 Wage and Tax Statements showing that the petitioner paid the beneficiary \$494.93 in 2000; \$1,211.89 in 2001; and \$2,404.90 in 2002. The director, in denying the petition, noted that the petitioner paid the beneficiary only about half as much in 2001 as in 2002.

On appeal, the petitioner submits materials establishing that the beneficiary became a Sea Org member in March 1995. By itself, this evidence does not establish the continuity of the beneficiary's Sea Org work during the 2001-2003 qualifying period.

The director's discussion regarding the disparate amounts shown on the beneficiary's Forms W-2 appears to revolve around the faulty presumption that these amounts represent a wage. In fact, as we have observed, Sea

Org membership is a vocation, rather than a salaried or wage-paying occupation, and the weekly allowance is only a small percentage of the total value of the consideration that the church provides to Sea Org members.

The low amount shown on the beneficiary's 2001 Form W-2 could reflect a temporary reduction in the amount of the beneficiary's weekly allowance, which would be of minimal consequence to a finding of eligibility. Alternatively, it could show that those payments ceased entirely for a period of time, which would be consistent with a potentially disqualifying interruption in the continuity of the beneficiary's work. The director should specifically request copies of weekly pay records to resolve this issue.

When considering the continuity of the beneficiary's work, the director must also take into account additional information in the record. In a letter dated December 15, 2003, [REDACTED] a legal officer for the petitioner, has stated that the beneficiary "has worked for [the petitioning entity] as a religious worker on a full time basis for the entire period from September 5, 2001 to September 5, 2003. . . . [H]e does not have any outside employment nor has he at any time that he has been in the United States." [REDACTED] the petitioner's director of Domestic Services, states: "My Department has been servicing [the beneficiary] during the times of September 5, 2001 through September 5, 2003." Neither of these individuals made any mention of activities that the beneficiary undertook outside the United States during the qualifying period.

The petitioner has submitted a copy of the beneficiary's passport. Pages 18-19 of the passport show an R-1 nonimmigrant visa and a partially obscured stamp, indicating that the beneficiary was admitted to the United States on September 13, 2000. The passport also, however, shows that the beneficiary did not remain in the United States after his 2000 entry. A stamp on page 7 of the passport shows that the beneficiary arrived at Heathrow Airport, London, on September 29, 2001. Page 18 of the passport shows that the beneficiary again entered the United States at Los Angeles on December 8, 2001. Thus, the beneficiary was outside the United States for over two months during the qualifying period. The petitioner's letters do not even mention this absence, let alone account for what the beneficiary was doing during that time. Ms. Gavigan's assertion that the beneficiary did not engage in outside employment "at any time that he has been in the United States" does not apply to the ten-week period when the beneficiary was overseas.

Another stamp on page 31 of the beneficiary's passport indicates that the beneficiary crossed the Slovakian border at Rusovce. A series of numerals on the stamp reads "10 06 0 01." If these numbers represent a date, they could refer to June 10, 2001 or October 6, 2001. The former date appears to be more likely, given the European convention of putting the day before the month. June 2001 fell before the qualifying period. We cannot, however, completely rule out that the stamp is from October 6, 2001, given the beneficiary's documented arrival in Europe a week earlier.

Prior to issuing a new decision, the director must allow the petitioner a final opportunity to produce first-hand evidence to show where the beneficiary was, and what he was doing, while outside the United States from September 29 to December 8, 2001. The director has already advised the petitioner that church officials in Los Angeles are in a position to attest only to activities that they personally witnessed, or for which they have access to confirming evidence. Given that the petitioner originally failed to mention this ten-week absence in the initial filing, the director is entirely justified in requiring evidence from competent sources at the site where the claimed work took place. At issue is what the beneficiary was doing in Europe in 2001, rather than

what church officials in California believe the beneficiary was doing at the time. If the petitioner is unable to account for the beneficiary's whereabouts and activities during this critical period, then the director would be justified in concluding that the petitioner has failed to establish the continuity of the beneficiary's religious work during the qualifying period.

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.