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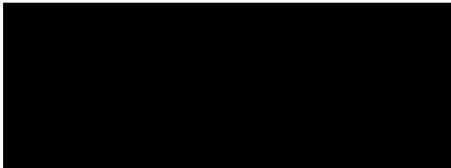
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: NOV 10 2005
WAC 01 127 53336

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:



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.

Mari Johnson

Sp Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The Administrative Appeals Office (AAO) withdrew the director's decision and remanded the petition, with instructions to certify the new decision to the AAO for review. The director has now approved the petition and certified the decision to the AAO pursuant to the remand. The AAO will withdraw the director's certified decision and once again remand the matter 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), as a purported member of the Sea Organization (Sea Org), the petitioner's religious order. The director determined that the petitioner had not established: (1) the minimum qualifications for the position offered, or whether the beneficiary has met those qualifications; (2) that the position qualifies as a religious vocation, a religious occupation, or the vocation of a minister; (3) the prospective employer's financial ability to support the beneficiary; or (4) the prospective employer's qualifying status as a tax-exempt religious organization. The AAO remanded the decision, having concluded that the petitioner had satisfactorily established its qualifying tax-exempt status, and that full membership in the Sea Org is a qualifying religious vocation, but that additional evidence would be necessary for an informed determination on the remaining grounds for revocation.

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 582.

One of the issues still in contention under the AAO's prior remand order was whether the beneficiary became a full member of the Sea Org at least two years prior to the petition's March 1, 2001 filing date, as required by 8 C.F.R. §§ 204.5(m)(1) and (3)(ii)(A). The AAO has found that there are several steps inherent in the process of joining the Sea Org, and that the process ends with completion of the Estates Project Force and passage by a Fitness Board. Documentation in the record shows that the beneficiary passed the Fitness Board on September 14, 1992, more than eight years before the filing date. Thus, the petitioner has shown that the beneficiary began to practice a qualifying religious vocation prior to the two-year statutory qualifying period.

The aforementioned regulations, however, do not only require that the beneficiary began practicing the vocation more than two years before the filing date. They also require that the beneficiary has continuously engaged in the vocation throughout that two-year period.

Another issue under consideration concerns the petitioner's ability to compensate and support the petitioner. The regulation at 8 C.F.R. § 204.5(g)(2) states:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service.

Furthermore, 8 C.F.R. § 204.5(m)(4) requires the petitioner to set forth the terms of compensation. [REDACTED] the petitioner's human resources director, has stated: "the Church will provide [the beneficiary] with all food, clothing, transportation and health care. In addition, [the beneficiary] will receive a \$50.00 per week spending allowance." The petitioner has well over 100 employees, and it claims to have employed the beneficiary in California since 1998. The petitioner has submitted copies of Forms W-2 Wage and Tax Statement reflecting payments to the beneficiary.

Fifty dollars per week adds up to \$2,600 per year, and most of the Forms W-2 show comparable amounts, but in 2001, the beneficiary received only \$1,571.50. Even taking into account \$120.32 in taxes withheld, the beneficiary's total compensation in 2001 falls far short of the proffered amount. This significant reduction in the beneficiary's pay suggests three possible explanations: (1) In 2001, the petitioner lacked the ability to pay the beneficiary's full weekly allowance; (2) there was a significant interruption in the beneficiary's work in the United States during 2001; or (3) the beneficiary worked throughout the year and funds were available to pay the full allowance, but the petitioner, for some reason, chose to provide a substantially decreased allowance.

The AAO, in its remand order, stated:

The petitioner has submitted a letter from a financial official, stating that the petitioner employs more than 100 workers. The director must address this letter, and if it is insufficient, the director should request additional evidence of the types described in the above regulation. We note that the petitioner has submitted Forms W-2 and other pay records, showing that the beneficiary received more than the proffered wage in 2002, but significantly less in 2001. Before making any determination regarding the petitioner's ability to pay the full wage, the director should ascertain why the beneficiary received barely three-fifths of the proffered wage in 2001.

On April 20, 2005, the director instructed the petitioner to "provide a detailed explanation / clarification as to why the beneficiary received barely three-fifths of the proffered wage in 2001. In response, the petitioner has submitted a copy of a "Declaration of Religious Commitment and Membership in the Sea Org," which the beneficiary signed on September 16, 1998. This declaration states, in part, "the Church will, pursuant to this covenant, furnish certain necessities . . . including a small weekly allowance. . . . The amount of material support may vary depending upon economic conditions generally prevailing within the Church." This explicit assertion that "economic conditions" would affect the amount of the allowance appears to be an admission that the petitioner's ability to pay the full amount is uncertain.

In an affidavit, [REDACTED] the petitioner's legal officer, states that the weekly allowance "is normally \$50.00 per week, but it may vary, depending on other factors, as it did in 2001." Mr. [REDACTED] did not identify, explain, or document the "other factors." This assertion, like the above-cited clause in the declaration, appears to be an admission that the petitioner may, at times, be unable to provide the promised level of remuneration. The petitioner cannot override the requirements of 8 C.F.R. §§ 204.5(g)(2) and (m)(4) simply by claiming the discretion to vary the beneficiary's compensation. Whatever the church's internal payroll arrangements, the petitioner had made the representation that it would pay the beneficiary \$50 per week. If the petitioner has been unable to honor that representation subsequent to the filing date, then the petition cannot be approved absent persuasive evidence that the petitioner typically has the ability to pay, and that the financial shortfall was due to unique factors unlikely to be repeated. *See Matter of Sonogawa*, 12 I&N Dec. 612 (BIA 1967). Similarly, whether or not the petitioner chooses to acknowledge that the weekly allowance is a wage, or that the beneficiary's work for the petitioner constitutes employment, an alien who performs work for a religious organization in exchange for room, board, and a stipend in lieu of a salary is considered to be "employed" for immigration purposes. *See Matter of Hall*, 18 I&N Dec. 203 (BIA 1982).

The petitioner's responses to the April 20, 2005 notice, and to a subsequent, identically worded notice issued July 12, 2005, contain no specific explanation for the downward fluctuation in the beneficiary's allowance. Consequently, on August 3, 2005, the director issued a new notice of intent to revoke, stating: "the petitioner indicates the Sea Organization provides a 'small weekly allowance' . . . which 'varies depending upon economic conditions generally prevailing within the church.' . . . [T]he petitioner failed to specifically explain what extenuating circumstances led to a cut in the beneficiary's pay in 2001." The record contains no response to the August 3, 2005, notice of intent to revoke. It appears that, after the issuance of this notice, the director simply reinstated the approval of the petition.

Subsequent to the AAO's remand order, the director provided the petitioner with three opportunities to provide a specific, documented explanation for the substantial underpayment of the beneficiary's allowance during 2001. The petitioner has not addressed this issue. From the information available in the record, we cannot determine whether the petitioner was unable to pay the full amount owing to "economic circumstances," or whether a lengthy interruption in the beneficiary's work led to non-payment of the allowance. Both of these factors are potentially disqualifying, and therefore demand to be addressed.

The petitioner has demonstrated that it is a qualifying tax-exempt religious organization, that the Sea Org is a religious order, and that the beneficiary joined that religious order more than two years prior to the filing of the petition. The petitioner has, therefore, successfully resolved most of the issues preventing the approval of the petition. The director shall allow the petitioner one final opportunity to provide a specific, credible, and documented explanation for the major shortfall in the beneficiary's 2001 remuneration. Affidavits from individuals not responsible for the beneficiary's remuneration shall not suffice in this regard, nor shall vague, general assertions such as the claim that the petitioner reserves the right to vary the allowance, or that unspecified "circumstances" were responsible for the shortfall. We note that, by signing the Form I-360 petition, the petitioner specifically authorized "the release of any information . . . from the petitioning organization's records" deemed necessary for the adjudication of the petition. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Owing to the AAO's remand order and the director's repeated requests, the petitioner has been on notice for several months that more information is required regarding the beneficiary's remuneration in 2001; therefore, it is reasonable to require compelling evidence to support any future requests for additional extensions of time to obtain the needed evidence.

Therefore, this matter will once again 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, regardless of the outcome, is to be certified to the Administrative Appeals Office for review.