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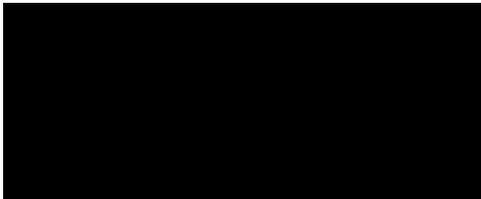
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **JAN 09 2006**
WAC 03 256 54509

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.

2 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 appeal will be sustained 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 key documents reproduced in the record, as well as the credibility of certain claims by the petitioner.

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)(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.

In a letter dated September 12, 2003, [REDACTED] a personnel officer with the petitioning church, discusses the beneficiary’s work:

[The beneficiary] became a Scientologist in October 1993 and he became a Sea Organization member also in October 1993 in Copenhagen, Denmark. [The beneficiary] worked in the Church of Scientology in Copenhagen and came to Los Angeles in November 1999. . . .

[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 director concluded that the petitioner did not adequately describe the beneficiary’s duties, and that the petitioner has failed “to show that the Sea Organization has a governing structure, a formal legal organizing instrument, set theological education standards, or operates with its own budget and assets.” The director did not explain the source of these requirements. The director acknowledged the members’ “life-long commitment to their faith,” but determined that there is insufficient evidence to conclude that the Sea Org is a religious order, whose members qualify as workers in a religious vocation.

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 12, 2003 filing date, as required by section 101(a)(27)(C)(iii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(iii), and 8 C.F.R. §§ 204.5(m)(1) and (3)(ii)(A).

The initial submission 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 October 28, 1993. The Contract shows a 1995 copyright date. Two certificates, for "Staff Status I" and "Staff Status II," show issuance dates of January 20, 1994 and February 27, 1994, respectively; but both certificates also show 2001 copyright dates.

In a request for evidence (RFE) dated September 30, 2003, the director requested "a detailed explanation," supported by "documentary evidence," relating to the above discrepancies. In response, [REDACTED] a legal officer with the petitioning church, states:

The original contract of employment which the beneficiary signed in October 1993 was lost in Denmark and the beneficiary signed another Employment Contract in November 1993 with different witnesses. Then that Employment Contract was temporarily misplaced and a duplicate original was signed after 1995. Since that time, the original document from 1993 was found and both original contracts of employment are enclosed. **Please return them to this beneficiary when you have completed your review of the document. . . .**

The original certificates of Staff Status I and II, that were issued to the beneficiary were lost prior to the I-360 Petition submission and duplicate certificates were prepared. The original of the certificates which had been copied for the I-360 Petition Submission are enclosed. **Please return the Certificates to this beneficiary when you have completed your review of the documents.**

(Emphasis in original.) The original documents remain in the record. Upon the conclusion of processing, the director is instructed to return the originals pursuant to 8 C.F.R. § 103.2(b)(5).

The director, in denying the petition, observed that the Sea Org "Contract of Employment" is not a decisive instrument of membership in the Sea Org, and that "[t]he petitioner submitted no documentary evidence to show that the beneficiary is in fact a full member" of the Sea Org. The director also found that the petitioner's explanation regarding the anachronistic dates on the beneficiary's documents was not persuasive. The director stated: "it is unclear how the petitioner was able to make a duplicate copy without the original in its possession," and that "the fact remains that the petitioner initially submitted documents purported to be issued in 1994, when in fact it was not" (sic).

On appeal, the petitioner submits materials concerning the various steps required to join the Sea Org, such as completion of the Estates Project Force (EPF) and review by a Fitness Board. From materials made available to us, we have concluded that an individual who has successfully passed review by the Fitness Board can be considered a member of the Sea Org (as opposed to a recruit, who is not a full member). Therefore, the petitioner can establish that the beneficiary possesses the relevant experience by submitting church records showing that the beneficiary passed the Fitness Board at least two years before September 12, 2003 and continuously engaged in the vocation during that time.

In a supplement to the appeal, the petitioner submits copies of church documents, including documents indicating that the beneficiary began his EPF training in November 1993 and passed the Fitness Board on December 30, 1993. This indicates that the beneficiary was a full member of the Sea Org for nearly ten years prior to the petition's September 2003 filing date. One document bears the legend "Issued at: Los Angeles, California on 27 September 2005." This demonstrates that the petitioner does, on occasion, reconstruct such certificates based on information in church records. Other materials appear to originate from 1993.

While it is of some concern that the petitioner has submitted reconstructed documents without (initially) plainly labeling them as such, there remains sufficient additional documentation and information to support the petitioner's claims and, thereby, a finding of eligibility. We see no evidence of fraudulent intent in the petitioner's submission of a reconstructed contract. (Such concerns must be addressed case-by-case, rather than with the inflexible *a priori* presumption that reconstructed documents always, or never, denote attempted fraud.)

We further note that the beneficiary's association with the church before 2001 is established by the fact that the petitioner filed an earlier petition on the beneficiary's behalf on March 31, 1997. That earlier petition was approved, but the director initiated revocation proceedings, at which time the petitioner withdrew the petition, triggering automatic revocation pursuant to 8 C.F.R. § 205.1.

Documentation relating to that earlier petition leads to another issue that demands resolution. The petitioner's initial petition included a February 13, 1997 affidavit from [REDACTED], who stated that the beneficiary began working for a church in Budapest in 1993; relocated to Copenhagen at the end of 1993; traveled to Washington, D.C. in July 1995; and was transferred to Los Angeles in March 1996. When the petitioner withdrew the first petition, Ms. Gavigan stated that the beneficiary "left the United States in April 1998 and did not return to the United States until November 1999." In her September 10, 2003 letter, Haley Medeiros indicates that the beneficiary "became a Sea Organization member . . . in October 1993 in Copenhagen, Denmark. [The beneficiary] worked in the Church of Scientology in Copenhagen and came to Los Angeles in November 1999." On December 22, 2003, Ms. [REDACTED] stated "the beneficiary first signed his Sea Organization contract in October 1993 and then signed another one in November 1993. He worked in Copenhagen, then briefly went to Budapest and then came to the United States in 1995 and departed in April 1998 and returned to the United States in November 1999."

The director contended that Ms. [REDACTED] December 2003 letter "directly contradicts" earlier accounts of the petitioner's whereabouts. We can find, however, no outright contradiction; that is, no specific assertion that the beneficiary was in two different locations at the same time. Instead, the petitioner has made incomplete statements regarding the beneficiary's whereabouts; for instance, the September 2003 letter mentions the beneficiary's work in Copenhagen and his 1999 arrival in the United States, but omits his earlier sojourn in the United States from 1995 to 1998. Because the qualifying period for the latest petition began in 2001, the petitioner may simply have believed that the beneficiary's whereabouts in the 1990s were immaterial to the claim and therefore not worth discussing in detail. Wherever the petitioner has provided particular details (such as when the beneficiary left one country for another), those details match closely or exactly from one account to the next. While the omissions in the petitioner's statements do not appear to represent willful attempts to mislead Citizenship and Immigration Services (CIS), the resulting confusion amply demonstrates why CIS prefers

contemporaneous documentary evidence over after-the-fact witness statements (and anachronistic, unlabeled reconstructions of documents).

In sum, while the director raised valid concerns regarding some of the petitioner's documents, the petitioner has overcome these concerns. Perhaps because of these concerns, the director saw additional discrepancies where there were none, such as in the details of the beneficiary's international travel.

Pursuant to the above discussion, the petitioner has overcome the stated grounds for denial. Upon review of the record, we see no readily apparent obstacle to the approval of the petition. 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 decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.