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U.S. Citizenship
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Services

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUN 02 2006
WAC 03 258 52690

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.

Robert P. Wiemann
Robert P. Wiemann, Chief
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 dismissed.

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.

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--

* * *

(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 first issue concerns the nature of the beneficiary's work for the petitioner. 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 11, 2003, [REDACTED] a legal officer for the petitioner, states:

Our staff, currently numbering approximately 240, are all required to be members of Scientology’s central religious order: the Sea Organization. . . .

The beneficiary will continue to live in appropriate religious community housing provided by the church. The Beneficiary’s food, clothing, medical care and transportation will be provided by the church. In addition, the Beneficiary will receive a weekly stipend of \$50.00. . . .

In 1997 [the beneficiary] joined our religious order, the Sea Org, and worked for awhile in Milano, Italy, as a Sea Org member in the Church. In February, 1998, [the beneficiary] entered the U.S. . . . to take up her religious vocational duties with [the petitioning church]. She has been performing work in her religious vocation at [the petitioning church] fulltime since then, at least 40 hours per week.

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 15, 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 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 10, 1997. Several of the other certificates show 1996 copyright dates, although they were purportedly issued in 1995. The phrase "I attest this is a duplicate" appears on these latter documents. The documents, as submitted, are photocopied templates to which the beneficiary's name, the date of issuance, and other information have been added via felt-tip marker (which has soaked through to the back of the page). Thus, the certificates are clearly not photocopies of certificates as issued to the beneficiary, but "duplicates" in the sense that they have been re-created.

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 noted that some of the beneficiary's certificates lack credibility because their purported issuance dates predate their copyright dates. We take issue with this latter conclusion because, given that the documents were clearly labeled "duplicates," it cannot be argued that the petitioner had attempted to present the documents as anything other than duplicates.

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 15, 2003 and continuously engaged in the vocation during that time.

In a supplement to the appeal, the petitioner submits copies of church documents (some contemporaneous, some reconstructions), including a document indicating that the beneficiary passed the Fitness Board on April 6, 1997. This indicates that the beneficiary was a full member of the Sea Org for more than six years prior to the petition's September 2003 filing date.

Other information in the record led the director to question the continuity of the beneficiary's religious work. The September 11, 2003 letter from [REDACTED] offered no indication that the beneficiary had worked anywhere but the petitioning church in Los Angeles during the 2001-2003 qualifying period. Specifically, [REDACTED] had stated: "In February, 1998, [the beneficiary] entered the U.S. . . . She has been performing work in her religious vocation at CSCCI [*i.e.*, the Church of Scientology Celebrity Centre International, which is the petitioning entity] fulltime since then . . . and it has been the only work performed during this time."

The present petition, however, is not the first petition that the petitioner had filed on the beneficiary's behalf. On September 29, 2000, the petitioner filed its first petition for the beneficiary, including an affidavit from church legal officer [REDACTED] stated that the beneficiary began working for the petitioning church in California in February 1998, but "[i]n August 1998, [the beneficiary] was sent on a temporary assignment to the

¹ It is not clear whether [REDACTED] are one and the same.

Church of Scientology Celebrity Centre Nashville.” [REDACTED] did not specify the duration of the beneficiary’s sojourn in Nashville. Because [REDACTED] September 2003 letter did not mention the beneficiary’s time in Nashville, the director instructed the petitioner to submit “a detailed explanation of this discrepancy and . . . documentary evidence to support your claim.”

The director also noted documents in the record that indicate that the beneficiary left and re-entered the United States on three occasions after her February 1998 arrival, including one occasion in April 2003 that fell within the two-year qualifying period. The director instructed the petitioner to submit “a detailed list of the beneficiary’s travels outside the United States from February 1998 until the current time. Indicate the location(s) of travel, reason(s) for travel, and length(s) of stay outside the United States.”

The director further instructed the petitioner to submit “evidence of the beneficiary’s work history beginning September 15, 2001 and ending September 15, 2003.” The director specified that any letters describing the beneficiary’s work “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 other words, the petitioner has no demonstrated standing to attest to employment that took place off of the petitioner’s premises. The director also requested “copies of the beneficiary’s IRS Forms W-2 (Wage and Tax Statement) for 2000, 2001 and 2002.”

In response to the notice, [REDACTED] states: “The Church of Scientology Celebrity Centre Nashville, in Nashville, Tennessee, was the work location of [the beneficiary] from September 2001 to mid February 2003. The [petitioning church] in Los Angeles, California, was the work location of [the beneficiary] from February 2003 through September 2003.” [REDACTED] adds that the petitioning church in Los Angeles “oversees and takes care of” the Celebrity Centre in Nashville. With regard to the beneficiary’s foreign [REDACTED] states that each of the beneficiary’s overseas trips, including eleven days in April 2003, were both to visit family and to undertake unspecified church business.

Despite the director’s specific instruction to submit experience letters from each location where the beneficiary undertook church work, the petitioner submitted nothing from any church official in Italy. This is a fairly minor concern here, because the beneficiary’s only trip to Italy during the two-year qualifying period was so short that, even if it were entirely a vacation, it could not reasonably be deemed interruptive of the beneficiary’s religious vocation. Of greater concern is the considerably longer time that the beneficiary spent in Nashville.

[REDACTED] the petitioner’s director [REDACTED] states that the beneficiary resided in church housing in Los Angeles “from February until August 1998 and from February until November 2003, plus numerous visits in between.” This indicates that the beneficiary was primarily based in Nashville from August 1998 through February 2003, and thus she was in Nashville in September 2000 when the petitioner filed its first petition on her behalf. We shall revisit this issue later in the decision.

The petitioner submits copies of Forms W-2 from the petitioner, dated 1998 through 2002, and from the church in Nashville, dated 2001 and 2002. The petitioner’s payments to the beneficiary in 2001 and 2002 were minimal; \$105.00 in 2001, and only sixty cents in 2002. The church in Nashville provided the bulk of the beneficiary’s support both of those years.

The petitioner submits copies of what appear to be weekly pay records from October 2001 through August 2003, with occasional brief gaps. The beneficiary's name appears on these records, but the employer is not identified. An electronic legend printed at the top of the record for the second half of 2002 indicates that the records were sent by fax from a "Chiropractic Wellness" office or clinic with a 615 area code, which corresponds to the Nashville area. The presence of the beneficiary's pay records for late 2002 in Nashville is circumstantial evidence that the beneficiary worked there at that time, as claimed.

The director, in denying the petition, stated: "The petitioner is not in a position to verify employment gained at a different location." Nevertheless, the petitioner has submitted other documentation (including payroll records) placing the beneficiary at the church in Nashville during the period claimed. The Forms W-2 amount to first-hand evidence from the Nashville church regarding the beneficiary's employment there. Considering the materials submitted, the preponderance of evidence suggests that the beneficiary worked continuously in Nashville for most of 2001 and 2002 as the petitioner has claimed. As a worker in a religious vocation, the exact nature of the petitioner's duties are less significant than they would be for a worker in a religious occupation.

We note that, on the Form I-360 petition, the petitioner indicated that the beneficiary has never worked in the United States without permission. Pursuant to 8 C.F.R. § 214.2(r)(3)(ii)(E), a religious organization seeking an R-1 nonimmigrant religious worker for an alien must provide the name and location of the specific organizational unit of the religious organization for which the alien will be providing services within the United States. 8 C.F.R. § 214.2(r)(6) states:

A different or additional organizational unit of the religious denomination seeking to employ or engage the services of a religious worker admitted under this section shall file Form I-129 with the appropriate fee. The petition shall be filed with the Service Center having jurisdiction over the place of employment. . . . Any unauthorized change to a new religious organizational unit will constitute a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act.

Citizenship and Immigration Services (CIS) records do not indicate that the beneficiary has ever been authorized to work at the church in Nashville. On January 25, 2000, the petitioning church in Los Angeles filed a Form I-129 nonimmigrant visa petition with the California Service Center on the beneficiary's behalf. According to the petitioner's own assertions, the beneficiary was primarily working in Nashville from 1998 to 2003. The AAO does not have the record of proceeding for the I-129, but the fact that it was filed at the California Service Center indicates that the nonimmigrant visa petition was not filed with the Service Center having jurisdiction over Nashville (specifically, the Texas Service Center). If (as it appears) the beneficiary's R-1 visa was predicated on employment in Los Angeles, then any work by the beneficiary in Nashville violated her nonimmigrant status.

We also note that, pursuant to section 265(b) of the Act, 8 U.S.C. § 1305(b), and 8 C.F.R. § 265.1, the beneficiary is required to report every change of address within ten days of such a change. The record does not indicate that the beneficiary reported her move from Los Angeles to Nashville. Continuing to use the Los Angeles church as an "in care of" mailing address does not satisfy the beneficiary's obligations in this regard.

The remaining ground for denial relates to another relocation by the beneficiary. The petitioner's response to the director's request for evidence includes a December 22, 2003 letter in which [REDACTED] states that the beneficiary "recently transferred to Church of Scientology of Buffalo, New York." [REDACTED] 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. Mirroring the requirement at 8 C.F.R. § 214.2(r)(3)(ii)(E), 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 fact that an alien is permitted to self-petition does not amount to *carte blanche* to change the terms of the job offer.

We note that the petitioner has overcome most of the grounds for denial in this proceeding. The principal remaining impediment 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. We reiterate here that if a nonimmigrant religious worker transfers from one church location to another without prior notice to CIS, and the filing of a new Form I-129 petition, the religious worker has violated his or her status. Because the petitioner stipulates that the beneficiary has repeatedly transferred in this manner, any new petition filed on the beneficiary's behalf should acknowledge this violation. We also reiterate that the beneficiary is required by law to keep CIS apprised, in a timely manner, of changes of address.

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 not sustained that burden. Accordingly, the appeal will be dismissed.

The dismissal of this appeal is without prejudice to the filing of a new petition with the Service Center having jurisdiction over the place of intended employment.

ORDER: The appeal is dismissed.