

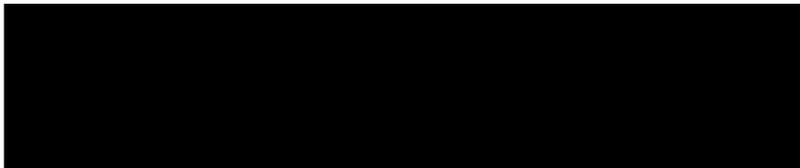
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U.S. Citizenship
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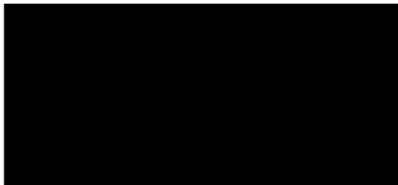


FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: MAY 03 2006
WAC 02 288 51633

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

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 sustained and the petition will be approved.

The petitioner is a regional headquarters 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.

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 nature of the beneficiary's position with the petitioning church. 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 17, 2002, Jessica Szombathy, a legal officer with the petitioning church, describes the beneficiary's work:

[The petitioner] has staff qualifications that must be met. One of these qualifications is that each religious worker take the vows of our religious order called the Sea Organization. . . .

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] joined the Sea Organization in January 2000. During this time she has been holding positions in our organizations such as an Auditor in the Hubbard Guidance Center delivering advanced pastoral counseling to Church parishioners coming to Los Angeles from around the world to receive these services.

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 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 25, 2002 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 petitioner's initial submission contained no documentary support for [REDACTED] claim that the beneficiary joined the Sea Org in January 2000. On May 21, 2003, the director issued a request for evidence (RFE), instructing the petitioner to submit evidence of the beneficiary's work history during the qualifying period. In response, [REDACTED] states that the beneficiary worked as at the petitioning church from September 25, 2000 to April 2001, and at the Church of Scientology International from April 2001 through "September 25, 2001." The "2001" here appears to be a typographical error, as the petition was filed on September 25, 2002. This would explain why the work history contains no subsequent listings.

The petitioner submits copies of weekly payroll records, showing that the beneficiary generally received weekly payments throughout the qualifying period. There are three pages of pay records, covering the following periods: September 29, 2000 – April 27, 2001; April 27, 2001 – September 14, 2001; November 1, 2001 – March 15, 2002; and March 29, 2002 – September 25, 2002. Three of the four pages fail to identify the paying entity; the third page, covering late 2001 and early 2002, mentions the "Flag Liaison Office." Many of the earlier payments are substantially less than \$50 per week. The most significant gap in payments is between September 14, 2001 and November 1, 2001. The petitioner does not acknowledge or explain this interruption. On the Form I-360 petition, the petitioner indicated that the beneficiary has been in the United States since April 1999, and therefore it does not appear that the beneficiary was on an overseas vacation in late 2001.

On September 11, 2003, the director issued a second RFE, requesting (among other things) copies of the beneficiary's tax documents for 2001 and 2002. In response, the petitioner has submitted copies of Form W-2 Wage and Tax Statements showing that the petitioner paid the beneficiary \$1,464 in 2002. The petitioner does not explain why the beneficiary's 2001 Form W-2 was not submitted, despite the director's direct request for that specific document. The petitioner has also submitted a letter from [REDACTED] the petitioner's treasury secretary, who states that the beneficiary was on the petitioner's payroll from April 1999 to April 2001, and from February 2002 onward. Between April 2001 and February 2002, the beneficiary "was paid by the Church of Scientology International."

The director issued a third RFE on December 6, 2003, requesting (among other things) further documentation of the beneficiary's employment and remuneration during the qualifying period. The director requested copies of the beneficiary's Forms W-2 for 2000 and 2001.

The petitioner's response includes a copy of 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 January 26, 2000.

[REDACTED] a personnel officer for one of the petitioner's subordinate entities, states: "Starting from June 17, 2001, [the beneficiary] was a part of the Church of Scientology International. . . . In February 2002, [the

beneficiary] was transferred to the American Saint Hill Organization [a component of the petitioning church] and has been a Scientology Instructor here ever since, until June 2002 [sic].” The letter is dated January 27, 2004.

The petitioner submits copies of Forms W-2, indicating that the petitioner paid the beneficiary \$1,732.51 in 2000 and \$2,723.58 in 2001. The latter amount appears to correspond with the amounts shown on the payroll records from 2001, not counting the “Flag Liaison Office” record.

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 apparent discrepancies and omissions in the petitioner’s evidence. For instance, “the petitioner submitted no Form W-2 issued by [the] Church of Scientology International for 2001.” The director also noted that the petitioner has provided inconsistent dates. For example, in response to the first RFE, [REDACTED] indicated that the beneficiary moved from the petitioning church to the Church of Scientology International in April 2001; later, [REDACTED] indicated that the beneficiary began working at the Church of Scientology International on June 17, 2001. These discrepancies led the director to question the credibility and reliability of the witnesses’ after-the-fact claims. Also, the director observed that individuals who were not at the Church of Scientology International are in a poor position to verify the beneficiary’s work there.

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 25, 2002 and continuously engaged in the vocation during that time.

In a supplement to the appeal, the petitioner submits copies of church documents dated January and February of 2000, identifying the beneficiary as a “Sea Org Member” rather than as a recruit. Documents also indicate that the beneficiary has received promotions that are available only to full Sea Org members. The preponderance of evidence in the record supports a finding that the beneficiary became a full Sea Org member more than two years before the filing date.

There remains the issue of the continuity of the beneficiary’s work from September 2000 to September 2002. The director rightly noted inconsistencies between witness accounts of the beneficiary’s activities. Given those discrepancies, the absence of a 2001 Form W-2 from the Church of Scientology International, or letters from that church’s officials, would normally be of significant concern. Here, however, the petitioner has provided weekly payroll documents that cover the time the beneficiary is said to have spent at that church. These are the same records that, presumably, would have been consulted in the preparation of a Form W-2. While the weekly payments were often less than the \$50 amount specified by the petitioner, the payments are essentially an

allowance rather than an hourly wage, and therefore a reduction in a particular week's allowance does not imply a proportional reduction in the hours that the beneficiary worked during that week.

We acknowledge the six-week gap toward the end of 2001. *Matter of M*, 1 I&N Dec. 147 (BIA 1941), concerns a rabbi who was on a planned two-month vacation in 1939 when Nazi Germany invaded his native Poland, thus preventing the rabbi's return to his congregation. For our purposes in the present proceeding, it is significant that the BIA did not consider the two-month vacation, itself, to be a disqualifying interruption in the rabbi's duties. Given this precedent,¹ and the lack of any indication that the present beneficiary engaged in secular employment at the time, the six-week gap in the 2001 payroll records does not appear to signify a disqualifying interruption in the beneficiary's work.

The record contains no contradictory evidence that would cast doubt on the information shown on the contemporaneous documents submitted on appeal, or show that the beneficiary engaged in disqualifying outside employment during the relevant two-year period. While the witnesses' statements are less reliable than the payroll records, this does not mean that the statements somehow undermine the credibility of those records. It is certainly true that ambiguous or inconsistent witness statements have complicated the matter, and it is equally true that one could imagine other types of documentation that would have provided immediate and conclusive proof of eligibility. Nevertheless, those materials that the petitioner has submitted, while imperfect, are nevertheless sufficient to establish a preponderance of evidence in favor of a finding of eligibility.

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.

¹ While *Matter of M* predates the current special immigrant religious worker statute, Congress, when it revised the law in 1990, approvingly acknowledged the body of "[s]ubstantial case law" already in existence. See H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).