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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: WAC 08 256 50671 Office: CALIFORNIA SERVICE CENTER Date: MAY 12 2010

IN RE: Petitioner: [redacted]
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:

[redacted]

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

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition and certified the decision to the Administrative Appeals Office (AAO) for review. The AAO will withdraw the director's decision. Because the record does not support approval of the petition, the AAO will remand the petition for further action and consideration.

The petitioner is a nonprofit corporation affiliated with the Church of Scientology (CoS). 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 its director of records, assets and materiel. The beneficiary is a member of the Sea Organization, which the AAO recognizes as the religious order of the CoS. The director determined that the petitioning entity's ties with the CoS are not sufficient to lend religious significance to the beneficiary's work.

In response to the certified decision, the petitioner submits a brief from counsel and letter from CoS officials discussing the petitioner's role within the CoS.

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;
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> (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 September 30, 2012, 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 September 30, 2012, 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
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> (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 U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(3) requires that the beneficiary must "[b]e coming to work for a bona fide non-profit religious

organization in the United States, or a bona fide organization which is affiliated with the religious denomination in the United States."

At issue in this proceeding is not whether the beneficiary belongs to such a religious order, but whether he works for a qualifying religious organization. If the beneficiary works for such an organization, then he is engaged in a qualifying religious vocation as defined at 8 C.F.R. § 204.5(m)(5).

8 C.F.R. § 204.5(m)(8) reads:

> *Evidence relating to the petitioning organization.* A petition shall include the following initial evidence relating to the petitioning organization:
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> (i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or
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> (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or
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> (iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, as something other than a religious organization:
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> (A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;
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> (B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;
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> (C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and
>
> (D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

Because the petitioner is an organization affiliated with the religious denomination of Scientology, the petitioner must meet the requirements of 8 C.F.R. § 204.5(m)(8)(iii) and its subclauses.

In a September 28, 2008 letter that accompanied the initial filing of the petition, [redacted] director of the petitioning entity, stated that the petitioner "is [an] independently incorporated organization affiliated with the Church of Scientology International, recognized in October 1993 as a religious organization under section 501(c)(3) of the United States Internal Revenue Code." A copy of the petitioner's October 1, 1993 IRS determination letter confirms the petitioner's tax-exempt status and indicates: "This ruling is based on evidence that your funds are dedicated to advance, protect and defend the religion of Scientology." This IRS determination letter satisfies 8 C.F.R. § 204.5(m)(8)(iii)(A).

The petitioner's initial submission also included *Description of the Scientology Religion*, a booklet published in 1993 by the Church of Scientology International. The booklet includes two paragraphs on the International Association of Scientologists:

> The International Association of Scientologists ("IAS") is a membership organization open to all Scientologists from all nations. The IAS provides support to churches of Scientology and IAS members engaged in activities which assist the expansion of Scientology and is also a unifying force which enables Scientologists to respond to and counter threats to freedom of religion in any corner of the world.
>
> The founders of IAS included in its constitution provisions that the IAS would take no action which would subject it to the jurisdiction of any country which tolerates and/or engages in the oppression of any religion or of mankind. Thus, the IAS is constituted as an unincorporated association of individual Scientologists from around the world. It does not participate in management or church affairs and is not part of the ecclesiastical hierarchy. The IRS has recognized the IAS as tax exempt.

We note that the petitioning employer is not the IAS itself, which the CoS describes as "unincorporated," but rather IAS Administrations, an incorporated entity that operates for the benefit of IAS members.

On November 26, 2008, while the petition was pending, USCIS published new regulations that included significant new documentary requirements. On February 5, 2009, the director instructed the petitioner to submit the newly required evidence. The director also requested additional information regarding the nature of the petitioning organization and the beneficiary's intended work for that organization. In the notice, the director instructed the petitioner to "explain how you are claiming to be affiliated with the Church of Scientology when in a booklet published by the church, they state that your organization is not part of their ecclesiastical hierarchy."

In response to the notice, counsel noted: "There is no requirement whatsoever that a petitioning religious organization be part of the church's ecclesiastical hierarchy."

The director denied the petition on April 10, 2009, stating that "if one works for a secular employer, whether or not that employer is tax-exempt, then there is no relevant sense in which one could be deemed a religious worker." The director asserted that [redacted] does not participate in management or church affairs" and "has no religious functions." In the denial notice, the director cited an unpublished AAO decision concerning an alien who worked for another CoS-affiliated entity, as well as "the Church of Scientology International website," although the record does not contain copies of these materials. (While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.) The director certified its decision to the AAO for review.

In response to the certified decision, the petitioner submits two letters from CoS officials. [redacted], a CoS legal officer, stated: "All Church staff members are members of the IAS," and the petitioner is "[t]he organization that makes it possible for the IAS to accomplish its purposes."

[redacted] stated that the petitioner's employees spend "a minimum of 12 ½ hours per week" "doing Scientology religious studies and spiritual counseling."

In an accompanying brief, counsel protests the director's reliance on materials outside the record without first advising the petitioner of those materials. Counsel correctly cites 8 C.F.R. § 103.2(b)(16)(i), which requires notification of adverse information, in this regard. We note, at the same time, that it is difficult to conclude that materials from the CoS's own web site, and a copy of an appellate decision previously mailed to a CoS entity, amount to material of which the petitioner is unaware. (We note that counsel in the present proceeding was also the attorney of record in the proceeding cited by the director. Also, counsel quotes at greater length from the web site, providing incontrovertible evidence that counsel was able to identify the site despite the director's lack of precise attribution.) More importantly for our present purposes, the cited materials do not support the stated grounds for the denial of the petition.

The director's decision rests heavily on assertions not supported by the record. For example, a CoS publication identified the IAS as a CoS organization, but the director cited this church documentation as evidence that the IAS is not affiliated with the CoS. The director has apparently confused IAS Administrations (the petitioning entity) with the IAS (the entity described in the CoS booklet). As another example, the petitioner's IRS determination letter specifically highlighted the religious role of the petitioning organization, but the director found that the petitioner had failed to show that its tax-exempt status derived from religious activity.

The director, quoting the CoS's web site, stated: "Sea Organization members occupy the most essential and trusted **positions in the senior churches in the Scientology ecclesiastical hierarchy**" (director's emphasis). This passage, however, does not indicate that all Sea Organization members occupy such positions. The record indicates that Sea Organization members serve the CoS in a broad variety of capacities, effectively forming an all-purpose work force for the CoS. We agree with the director that it is possible for a Sea Organization member to work in a non-qualifying

capacity. Hypothetically, the member could work as in a profit-generating enterprise, interacting with the general public in a context (such as retail sales) devoid of religious significance. In this instance, however, we are not persuaded by the director's reasoning that the petitioning organization, whose "funds are dedicated to advance, protect and defend the religion of Scientology" and whose functions appear to be entirely limited to the confines of the CoS, is not a religious organization.

For the reasons quoted above, we cannot affirm the director's decision. That decision rests entirely on grounds that the record does not support. At the same time, other factors exist that prevent the approval of the petition.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

USCIS regulations at 8 C.F.R. § 204.5(m)(10) and (11) concern the beneficiary's compensation and experience:

> (10) *Evidence relating to compensation.* Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.
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> (11) *Evidence relating to the alien's prior employment.* Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work, must have occurred after the age of 14, and if acquired in the United States, must have been authorized under United States immigration law. If the alien was employed in the United States during the two years immediately preceding the filing of the application and:
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> > (i) Received salaried compensation, the petitioner must submit IRS documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of income tax returns.
> >
> > (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.

> (iii) Received no salary but provided for his or her own support, and provided support for any dependents, the petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS.
>
> If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

The initial filing of the petition, on September 30, 2008, included no IRS documentation (or comparable foreign evidence) of the petitioner's finances or of the beneficiary's employment during the 2006-2008 qualifying period. The director's February 3, 2009 notice advised the petitioner of the evidentiary requirements at 8 C.F.R. § 204.5(m)(11). In response, the petitioner submitted a copy of an IRS Form W-2 Wage and Tax Statement, showing that the petitioner paid the beneficiary $2,442.97 in 2008. Other materials indicated that the beneficiary began working for the petitioner in California in February 2008, and that before that time, the petitioner had been based on a ship in the Caribbean Sea, based in the Netherlands Antilles.

The petitioner filed IRS Form W-3 Transmittal of Wage and Tax Statements from the Netherlands Antilles as early as 2005, as shown by copies of those transmittals in the record. Therefore, IRS Forms W-2 should exist for the petitioner's employees from 2005-2007. The petitioner, however, did not submit copies of IRS Forms W-2 issued to the beneficiary in 2006 or 2007.

The petitioner submitted copies of California Employment Development Department Form DE-6 Quarterly Wage and Withholding Reports for 2006 through 2008. The three most recent reports (showing the petitioner's current California address) show the beneficiary's name, but the beneficiary's name does not appear on any report before the second quarter (April through June) of 2008. (The beneficiary's name does not appear on the report for the first quarter of 2008, even though his work in California supposedly began during that quarter, in February.) These earlier reports, without the beneficiary's name, all show the petitioner's Netherlands Antilles address.

The petitioner has failed to submit evidence comparable to IRS documentation to establish the beneficiary's employment outside the United States during the 2006-2008 qualifying period. We acknowledge that the petitioner has submitted evidence that the beneficiary joined the Sea Org before 2006, but this evidence is not comparable in origin, content, or purpose to IRS documentation of compensated employment. Nothing in the regulations establishes, suggests, or implies a lower standard of evidence for aliens in religious vocations than for those in religious occupations, and therefore the beneficiary's membership in the Sea Organization cannot take the place of required evidence or excuse its absence.

Similarly, the petitioner claims to have provided the beneficiary with food, lodging, and other necessities throughout the qualifying period. 8 C.F.R. § 204.5(m)(11) requires IRS documentation of

non-salaried compensation, if available. 8 C.F.R. § 204.5(m)(10), which also pertains to compensation, states that, if IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation. Here, the petitioner has provided no explanation for the absence of IRS documentation (or comparable foreign documentation), and no verifiable documentation that the petitioner has provided the beneficiary's lodging or other necessities. After-the-fact letters from church officials, which contain vague assertions but no details, are not verifiable evidence, nor are they comparable to IRS documentation. This is not an attempt to impose an impermissible extra burden on the CoS or the Sea Organization. It is, rather, a required and necessary application of the same evidentiary standards that apply to all religious organizations seeking benefits for their alien workers.

We stress that the director already provided the petitioner with an opportunity to submit the required documentation; the director's notice of February 3, 2009 quoted the evidentiary requirements of 8 C.F.R. §§ 204.5(m)(10) and (11) in full. Therefore, the petitioner has already had an opportunity to submit this required evidence for consideration, and has failed to do so. The director is under no obligation to request this evidence a second time. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988), in which the Board of Immigration Appeals held that evidence need not be considered if the petitioner had already forfeited an earlier opportunity to submit such evidence. *See also Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988).

Therefore, the AAO will remand this matter for a new decision, reflecting the instructions above. 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, the director must certify to the Administrative Appeals Office for review.