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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **JAN 19 2011**

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Sperry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition, reopened the proceeding on the petitioner's motion, and again denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is mother church of the Church of Scientology denomination. 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 Org, the Church of Scientology's religious order. The director determined that the petitioner had not established that the beneficiary had the required two years of continuous, lawful work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits an attorney's brief and supporting exhibits.

The record contains Form G-28, Notice of Entry of Appearance as Attorney or Representative, naming [REDACTED] as the petitioner's attorney of record. (The Form G-28 erroneously identifies the petitioner as [REDACTED], a subsidiary church entity, but the same church official, [REDACTED], signed both Form G-28 and Form I-360.) According to the State Bar of Nevada, [REDACTED] has been in "inactive" status since September 1, 2009, four weeks after she filed the appeal. We will give due consideration to arguments [REDACTED] submitted on appeal. Nevertheless, because [REDACTED] is not an active member of the bar, and because the record contains no superseding Form G-28 signed by another active attorney, we must consider the petitioner to be self-represented in this proceeding.

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 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

(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)(4) requires the petitioner to show that the beneficiary has been working as a minister or in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously for at least the two-year period immediately preceding the filing of the petition. The USCIS regulation at 8 C.F.R. § 204.5(m)(11) requires that the beneficiary's qualifying prior experience, if acquired in the United States, must have been authorized under United States immigration law.

The petitioner filed the Form I-360 petition on January 6, 2009. On the petition form, the petitioner indicated that the beneficiary has been in the United States since July 1, 2003, but has no current nonimmigrant status. The petitioner asserted that the beneficiary has not worked in the United States without permission, and "is currently on unpaid sabbatical."

The petitioner submitted a payroll printout, showing that the beneficiary received \$50.00 per week, with occasional bonuses, from January 2006 to July 2008 (the month the beneficiary's R-1 nonimmigrant religious worker status expired). The petitioner also submitted copies of Internal Revenue Service Form W-2 Wage and Tax Statements, showing that the petitioner paid the beneficiary \$3,668.57 in 2005, \$3,515.71 in 2006 and \$3,688.13 in 2007.

Further attesting to the petitioner's material support of the beneficiary, the petitioner submitted a December 18, 2008 letter from [REDACTED] the petitioner's director of services, who stated that the beneficiary "has received his housing, transport and food from the Church during the time period of July 2003 until the present." In a December 19, 2008 letter, [REDACTED] the petitioner's director of records, assets and materiel, stated: "I have supplied [the beneficiary] with uniforms since 2003."

The director denied the petition on March 3, 2009, because "USCIS records and the I-360 petition do not indicate that the beneficiary has been in a lawful immigration status in the United States during the two-year period immediately preceding the filing of the petition." The director observed that "the beneficiary's authorized R-1 employment expired on June 30, 2008. The record also indicates that the beneficiary never left the U.S. after the authorized R-1 employment."

On April 3, 2009, the petitioner filed a motion to reconsider the decision. The petitioner's then-attorney, [REDACTED] noted that the regulations at 8 C.F.R. §§ 204.5(m)(4) and (11) allow for breaks in employment of up to two years. Ms. [REDACTED] asserted that the beneficiary, "who was on sabbatical from June 2008 through January 2009 was eligible to have his I-360 approved." Ms. [REDACTED] argued that "the plain language of the regulations" permitted a "sabbatical."

The director granted the petitioner's motion, but again denied the petition on July 8, 2009. The director stated that "the beneficiary's sabbatical period . . . must have been authorized under United States immigration law." The petitioner appealed the decision, and [REDACTED] argued:

Between June 2008 and January 2009, when the I-360 was filed, the Beneficiary was still considered an employee of the [petitioner] . . . but he was not actively working for the Church as he was not authorized to work under U.S. immigration laws. Therefore, the Church placed the Beneficiary on an authorized sabbatical.

. . . [T]he sabbatical did not involve unauthorized work in the United States, as there is no indication in the record that the Beneficiary engaged in any form of unauthorized employment. . . .

[The term] sabbatical is *not* defined in the regulations. Therefore in another basic rule of statutory construction, the plain meaning of the language in the statute or regulation should be used in interpreting the statute unless the meaning of the law when read as a whole would be absurd. Here the plain meaning of sabbatical is defined as follows: "leave" or "a break or change from a normal routine (as in employment)." Here, the Beneficiary was clearly on a sabbatical in the traditional sense of the term, as he was on leave and taking a break from his work.

(Emphasis in original.) The regulation at 8 C.F.R. § 204.5(m)(4)(iii) requires that "[t]he nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States." If, as counsel asserts, the terms "break" and "sabbatical" are effectively synonymous, then it is circular and meaningless to say "the nature of the break was for . . . sabbatical." Therefore, counsel's own logic defeats the argument. The plain wording makes it clear that the "sabbatical" is the *purpose* of the break, rather than the break itself. The petitioner cannot simply bench the beneficiary, stop paying his salary, declare a "sabbatical," and leave it at that.

Here, the petitioner has not submitted any evidence regarding its usual guidelines or practices with regard to placing Sea Organization members on sabbatical, or indeed that such sabbaticals ever existed within the Sea Organization before this particular instance. The petitioner has not shown that the beneficiary's "sabbatical" – which coincided exactly with the expiration of his nonimmigrant status – served any other purpose than to accommodate his continued presence in the United States after the expiration of his R-1 nonimmigrant status.

Furthermore, the appellate brief contains contradictory arguments. [REDACTED] asserts that "the beneficiary was at no time employed in the U.S. without authorization," but also that "the Beneficiary was still considered an employee of the [petitioner]" during his 2008-2009 "sabbatical." If the beneficiary was "considered an employee," receiving room, board, and other benefits reserved solely for the petitioner's employees, then he was, by definition, "employed."

Counsel contends that “the regulations contain no clear definition requiring the Beneficiary to have or maintain lawful status during any period of sabbatical.” The regulation at 8 C.F.R. § 204.5(m)(4)(i), however, requires the petitioner to show that “[t]he alien was still employed as a religious worker” during the break. If “the beneficiary was at no time employed in the U.S. without authorization,” then the beneficiary was not employed between July 2008 and January 2009, and that period cannot count as a qualifying break. If, on the other hand, the beneficiary “was still considered an employee” during that time, then he was an “employee” without employment authorization. Either interpretation disqualifies the beneficiary for the benefit sought.

When USCIS first proposed revisions to the regulations, USCIS explained the rationale for the lawful employment requirement: “Allowing periods of unauthorized, unreported employment to qualify an alien toward permanent immigration undermines the integrity of the United States immigration system.” 72 Fed. Reg. 20442, 20448 (April 25, 2007). The petitioner’s interpretation of the “sabbatical” clause turns this purpose on its head by claiming that the petitioner can get around the requirement simply by suspending the beneficiary’s duties and salary when his nonimmigrant status expires. The petitioner’s argument rests on the admission that it knowingly harbored an out-of-status alien, who willfully remained in the United States even though he had no legal right to do so. The petitioner cannot mitigate the beneficiary’s violation of immigration law (which the petitioner abetted) simply by labeling the violation a “sabbatical.” To allow such a situation would likewise undermine the integrity of the United States immigration system.

We agree with the director’s finding that the beneficiary’s unauthorized presence in the United States from July 2008 to January 2009 was not a qualifying break in the two-year qualifying period. We find, therefore, that the director properly denied the petition, and we will dismiss the appeal. We note that this finding is without prejudice to a future filing at a time when the beneficiary committed no violations of immigration law during the previous two years.

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 met that burden. Accordingly, the AAO will dismiss the appeal.

**ORDER:** The appeal is dismissed.