

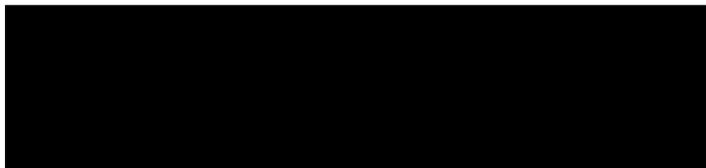
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

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**U.S. Citizenship  
and Immigration  
Services**



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DATE: MAR 06 2012 OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition. The petitioner appealed the decision. In keeping with administrative action following a revision of the pertinent regulations, the director issued a second denial notice and certified the decision to the Administrative Appeals Office (AAO). The AAO will withdraw the director's decision and remand the petition for further action and consideration.

The petitioner is a local 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 an auditor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as an auditor immediately preceding the filing date of the petition.

In response to the certified denial, the petitioner submits a letter from its president.

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).

At issue is the sufficiency of the beneficiary's past experience. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(4) states, in part, that the beneficiary must "[h]ave been working in one of the positions described in paragraph (m)(2) of this

section, either abroad or in lawful immigration status in the United States, and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. The prior religious work need not correspond precisely to the type of work to be performed.”

The petitioner filed the Form I-360 petition on March 8, 2007. In an accompanying letter dated February 26, 2007, [REDACTED] president of the petitioning church, stated:

The position being offered to [the beneficiary] is that of a Scientology religious counselor or Auditor. He has performed the duties of this position since 1987. An Auditor is a minister or minister-in-training of the Church of Scientology. . . . An Auditor is a person trained and qualified in applying Scientology religious counseling to individuals for their betterment.

Auditing is the central religious practice of the Church of Scientology. The requirements to administer each level of spiritual counseling and confession available at the [petitioning church] are very stringent. . . .

[The beneficiary] is extensively trained in the Scientology scriptures written by [REDACTED]. Having completed his basic Auditor training in 1987, he has continued to further his Scientology religious training in addition to performing his duties as a religious counselor.

To establish the beneficiary’s occupational training, the petitioner submitted copies of eight certificates dated between 1984 and 2004, including a [REDACTED] certificate dated December 21, 1999.

The petitioner submitted a photocopy of the 1993 publication *Description of the Scientology Religion*, which reads, in part:

The basic tenet of Scientology is that man is an immortal spirit . . . called a “thetan” in Scientology. . . .

Auditing consists of ascending levels of religious services that address the thetan. In the practice of auditing a trained, ordained minister or minister in training called an “auditor,” helps guide a thetan to address traumatic elements of his past, including past lives, and free him from their harmful effects. . . .

Auditing is conducted in confidential one-on-one sessions between an auditor who is qualified to deliver the specific level of auditing being addressed and the person who is receiving the auditing.

On November 7, 2007, the director issued a request for evidence, instructing the petitioner to provide additional evidence about the beneficiary’s position and the requirements for the position. The

director asked whether the beneficiary is a member of the Sea Organization, the religious order of the Church of Scientology. The director also asked: "Is the beneficiary a minister? If so, please submit evidence that he has been ordained. What level Auditor is the beneficiary?"

In response, [REDACTED] stated that the beneficiary "is currently trained to Class V as an Auditor. He is not a member of the Sea Organization; however he has completed the Scientology Minister's course on September 28, 2005 and was ordained as a Scientology Minister on September 30, 2005."

[REDACTED] senior case supervisor with the petitioning church, affirmed those details in a separate letter dated January 8, 2008. [REDACTED] also stated:

The minimum qualifications for an Auditor to begin auditing professionally at the [petitioning church] are:

- 1) A full course which teaches the technology of study (Student Hat Course).
- 2) Receiving auditing which clears up past confusions on earlier education (Method One Wordclearing or Method One Co-Audit). . . .
- 3) Two professional-level courses on Communication . . . (Professional Training Routines Course and Upper Indoctrination Training Routines Course).
- 4) A professional course teaching the auditor to be expert in using the E-Meter (Hubbard Professional E-Meter Course or E-Meter Course).
- 5) Academy Auditor Levels 0, I, II, III, and IV. These are the core training for an auditor. They teach him the basics of the religion and how to apply them in counseling.

I can attest that [the beneficiary] has done all of the above training and has met all of the above qualifications. He completed 1 and 2 in 1984, 3 and 4 were completed in 1997 and 5 was completed in 1999.

The petitioner submitted copies of certificates naming the beneficiary a "Scientology Minister," (September 28, 2005), and an "Ordained Scientology Minister" (September 30, 2005). Previously submitted certificates corroborate the beneficiary's completion of the steps [REDACTED] listed.

The director denied the petition on April 22, 2008. The director quoted the 1992 edition of *What Is Scientology?*, stating: "All Scientology auditors are required to become ordained ministers." The director stated: "a person training for a vocation or occupation is not 'working,' for immigration purpose[s], in that vocation or occupation." The director noted that the beneficiary received his ordination certificate less than two years before the petition's March 2007 filing date, and therefore concluded "the evidence is insufficient to establish that the beneficiary has been working continuously in the same type of work as the proffered position for the two-year period immediately preceding the filing of the petition."

The petitioner appealed the director's decision. [REDACTED] repeated the previous assertion that "[a]n auditor can be either an ordained minister or a minister-in-training." The petitioner submits a copy of page 557 of *What Is Scientology?*, and [REDACTED] observed that the director had omitted an important clause when quoting from that publication. The full sentence reads: "All Scientology auditors are required to become ordained ministers; however, they are allowed to audit as ministerial students while fulfilling their ordination requirements."

While the appeal was pending, USCIS published new regulations for special immigrant religious worker petitions. Supplementary information published with the new rule specified: "All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule. If documentation is required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). The director allowed the petitioner an opportunity to supplement the record with the newly required evidence.

Subsequently, on May 15, 2009, the director again denied the petition, for essentially the same reason as before. Specifically, the director again found that the petitioner was training, not working, prior to his September 2005 ordination. The director certified the decision to the AAO for review.

In response to the certified decision, [REDACTED] stated: "we are seeking the beneficiary's services as an Auditor, not as an 'Auditor/Minister' as stated in the denial decision." [REDACTED] also asserted that the petitioner has already documented the beneficiary's continuous, paid employment, and that "any training done by [the beneficiary] would have been in addition to the 40 hours a week he spent performing the duties and functions of an auditor."

The USCIS regulation at 8 C.F.R. § 204.5(m)(4) states: "The prior religious work need not correspond precisely to the type of work to be performed." The director quoted this regulatory passage in the certified denial notice. Nevertheless, the denial appears to be contrary to this regulation. The beneficiary need not have been an ordained minister throughout the entire qualifying period, provided that he performed qualifying religious work continuously during those two years. The director has concluded that experience as an auditor is not qualifying experience unless it takes place after ordination, but the record offers no support for this assumption.

The regulatory definition of "religious occupation" at 8 C.F.R. § 204.5(m)(5) states, in part: "Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status." In this instance, the beneficiary was not a seminarian or part-time volunteer while primarily pursuing religious study or training. The director did not dispute that the beneficiary performed religious functions for the petitioner throughout the 2005-2007 qualifying period, and the record establishes that the petitioner paid the beneficiary throughout that period. All available evidence indicates that the petitioner pursued training incident to status, while also performing compensated religious work as an auditor.

The above discussion indicates that the petitioner has overcome the only stated basis for denial of the petition. The AAO will withdraw that basis and, therefore, the denial decision. Nevertheless, an issue remains which the director must resolve before a definitive resolution is possible.

The AAO may identify additional grounds for denial beyond what the Service Center identified 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 (9<sup>th</sup> 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).

The USCIS regulation at 8 C.F.R. § 204.5(m)(12) reads:

*Inspections, evaluations, verifications, and compliance reviews.* The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

The AAO will remand the petition in order for the director to determine whether the petitioner has satisfied the regulatory requirements at 8 C.F.R. § 204.5(m)(12). The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. 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, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.