

25 June 2007

Via E-mail

Director, Regulatory Management Division  
Department of Homeland Security  
U.S. Citizenship and Immigration Services  
111 Massachusetts Avenue, N.W.  
3rd Floor  
Washington, DC 20529

RE: RIN 1615-AA16, CIS No. 2302-05, DHS Docket No. USCIS-2005-0030; Comments to Proposed Rule "Special Immigrant and Nonimmigrant Religious Workers" (79 Fed. Reg. 20442) (April 25, 2007)

Dear Sir/Madam:

Church of Scientology Flag Service Organization (CSFSO), located in Clearwater, Florida, is the largest single Scientology church in the world and ministers Scientology advanced religious services found in no other church of Scientology. CSFSO is also the Scientology religion's international religious retreat and seminary, and therefore ministers Scientology religious services to multinational parishioners.

Due to these somewhat unique circumstances, CSFSO is required to employ numerous religious workers, all of whom are members of our church religious order and many of them non-Americans. Thus, CSFSO submits the following comments on the proposed regulations published in the Federal Register on April 25, 2007, that propose modifying both the R-1 nonimmigrant religious worker program and the I-360 special immigrant program.

There are portions of the proposed regulatory change that will negatively affect the growth of our church and which we feel are overbroad in an attempt to address purported fraud observed by Citizenship and Immigration Services (CIS) with respect to religious worker programs.

#### Regulatory Definitions

##### Denominational Membership

CIS proposes to implement a change to the regulatory language involving denominational membership in an attempt to define the term for purposes of outlining eligibility for initial entry on an R-1 visa. The language of the proposed regulation attempts to define a denomination as an organization with a "shared faith and worship practices." While all of the various churches of Scientology around the globe conform to this revised statutory definition, CSFSO has noted a large number of requests for evidence that ask for information and evidence which appear to tie two or more churches of Scientology together. CSFSO therefore has legitimate concerns that CIS will use the proposed statutory language as a dilatory tactic in adjudicating applications for religious worker visas. Moreover, the proposed regulatory change is dangerous in that it allows the adjudicating officer to inquire into the sincerity of a religious convert's convictions in taking up a new denominational practice. Clearly, this is overly broad statutory language in light of the two-year requirement. The proposed regulatory change will create excessive entanglement between church and state in adjudicating such applications.

##### Minister

The proposed definition for a minister requires that the individual be "fully trained." CSFSO seeks clarification of this definition. It is the hope and

expectation of CSFSO that CIS will let each religion determine when its ministers are "fully trained" and that there will be no requirement for ministers to attain the highest level of training available or requirement that the minister be exceptional beyond other ministers of the church. Ministers in the Scientology religion continue their religious education in levels of increasing skill yet are considered ministers with the attendant rights and responsibilities when they satisfy our ordination requirements and procedures. Many other religions have similar systems of increasing the skill of the minister, or providing access to religious mysteries or increase in status - from the writer's perspective, they differ in each case. CSFSO suggests that CIS consider the word "qualified" as a substitution for "trained" in the definition.

### Religious Vocation

CSFSO is concerned about the proposed regulatory change to the definition of "religious vocation" to include the words "dedicated to the religious practices and functions, as distinguished from the secular members of the religion." This language is confusing and tends to allow the CIS to recognize and determine what is a religious practice and function within each applicant's religion. While CSFSO agrees that a true dedication and commitment to the religion is an essential element to a religious vocation, the concern is that CIS will confuse a dedication to religious practices and functions with the performance of practices and functions.

The definition of religious vocation in the US State Department's Foreign Affairs Manual contains a more clear, plain language delineation between a dedication and performance. In this publication religious vocation is defined as "a calling to religious life, evidenced by the demonstration of a lifelong commitment as practiced in the religious denomination, such as the taking of vows." It further states that "[p]ersons with religious vocations may engage in any type of activity within their denomination or its affiliate, and the absolute exclusion of janitors, maintenance workers, clerk, etc. from the definition of 'religious occupation' does not apply to religious vocations." (emphasis added) Under this definition, the focus is not on what type of work the person will do in the U.S., but on the person's status within the religious organization. A small percentage of our religious order perform work at our retreat that may not be considered a "religious functions," such as administrative work unique to the ministry section of our church, or upkeep of church property and grounds. However, all of these religious workers have taken lifelong vows, are performing functions in accordance with our scriptures and ecclesiastical orders, and are therefore working in accordance with their religious vocation regardless of the type of work they perform at CSFSO.

Our religious order operates much the same as the Judeo-Christian model used by the CIS in its definitions, where members of our religious order perform work in strict accordance with our rule. Much the same as the religious vocation of a Catholic nun who works in a circus to bring their ministry to the members of a circus troop, members of our religious order sometimes perform activities that could be considered non-religious, yet they do so in accordance with our rule of dedication to the practices and functions of the Scientology religion, and service to the secular members of the Scientology religion (our parishioners). In our religion, there exists a very clear distinction between members with religious vocation and those who are secular.

CSFSO is concerned that a misinterpretation of this new regulatory change will confuse the definitions of religious vocation and occupation, and thus eliminate previously designated religious vocational workers who have dedicated their lives to their religion.

### Religious Worker

There are several concerns under this proposed definition.

This new religious worker definition would require all religious employees to be compensated and to receive compensation in forms that can be documented on a W-2 form, even if the remuneration from the church was provided in kind, such as through the provision of room, board and other necessities. However, this creates an undue burden on members of our religious order, who receive only a small cash allowance but all other benefits in kind which are not reported on a W-2 form. A possible solution would be to include alternative forms of evidence, such as social security earnings report that lists the person's employer(s) and earnings.

Also, with the requirement for petitions to be filed and approved before obtaining a visa at the consulate, it's not clear if this requirement would be imposed if the individual was in the USA in R status, and then leaves for a brief period of time in performance of their religious duties. Under the proposed regulations, it appears that if a religious worker leaves the United States, they will spend a significant amount of time abroad awaiting the outcome of a new Form I-129 Petition prior to obtaining another R visa and returning.

Moreover, the proposed documentary requirements raise concerns about our religious worker's abilities to produce other types of supporting documents, such as tax returns. Most members of our religious order do not have earnings sufficient to require the filing of a tax return and as such are unable to produce these documents. Clearly, CSFSO wants to avoid any regulatory construction or language that would place a burden on our workers to produce documentation that - in many instances - does not exist although the religious worker has comported him-/herself in a way that is fully compliant with this nation's laws.

While CSFSO understands that CIS's goal is to obtain an objective means for measuring religious work and its necessity, perhaps less intrusive methods could be employed, as it appears that CIS is treading on dangerous unconstitutional entanglement ground. Furthermore, the fraud concerns raised by CIS in Proposed Regulatory Changes (RIN 1615-AA16) can realistically be addressed through other means and not through such an inappropriately far-reaching and overbroad manner. CSFSO suggests that a better approach would be to provide a more thorough documentary requirement when the beneficiary appearing for an interview at the American consulate abroad.

#### Proposed Petitioning Requirements

##### Initial Manner of Admission

The portion of the proposed regulations that requires an approved petition from CIS before religious workers can make an initial entry into the United States from abroad creates an untenable solution to a perceived problem with fraud in the religious worker program. The requirement for the church to petition CIS first before the religious worker may seek a visa at a U.S. consulate abroad will add many months to the process of obtaining religious worker visas. Processing times for I-129 Petitions by the CIS seems to be inconsistent, but CSFSO has some extension petitions pending as long as six or seven months. Current CIS publications report that their Service Centers are processing petitions filed before April 2007, yet do not state how long those petition filed before April 2007 have been pending.

In the event that the petition requirement is extended to applicants filing for visas from U.S. Consular Posts abroad and there is no change in processing times of I-129 Petitions, this condition will only be exacerbated.

Moreover, there is no incentive built into the proposed regulations to encourage what is an already overburdened agency to expeditiously adjudicate any R-1 petitions that may be filed from abroad. While certain visa categories, such as H- and L- visas require that the U.S. employer file a petition with CIS before the worker may request his/her visa from abroad, those visa categories are eligible for premium processing. However, there is no premium processing option

available to religious workers and CIS has recently announced its plan to continue this suspension indefinitely. As a result, our church expects to be negatively impacted by the proposed regulation, if it were to take effect in its current form, as our competent and able religious workers would be stranded abroad during the initial application period for extended periods of time while awaiting CIS adjudication of our church's U.S. petitions for the workers. If the proposed regulation were to take effect in its current form, certainly, a 30-day processing requirement for such applications after being received by CIS would be a method of alleviating what would otherwise be a crippling burden on our church.

#### Periods of Admission, initial or subsequent

The proposed regulation seeks to limit the initial period of admission for a nonimmigrant religious worker from its current two to three years to one year. With an initial visa validity period of one year, should the nonimmigrant religious worker delay his entry into the USA, or depart and return to the United States during this one-year period, he would be granted a Form I-94 with a shorter validity. If this happens, then filing an extension shortly after entry would be burdensome.

As a non-profit religious organization, our church completes many of its filings on its own. We predict that this change will make our task of keeping our workers in status even more difficult and will place onerous requirements on our church and workers to file extensions almost immediately after a shorter initial or subsequent entry is granted.

Clearly, with recent fee increases and the proposed increased number of filings required for a religious worker to be employed during the entire period for which he/she would have a visa available, the financial impact on the Church of Scientology and other religious groups will be extreme. Moreover, the new processes proposed only appear to extend adjudication times and there is no quid pro quo of timely and efficient adjudication that will attach despite the additional expenses. For these reasons, CSFSO must oppose these proposed changes to the nonimmigrant religious worker program.

#### 501(c)(3) Letter

Finally, CSFSO suggests a clarification to your proposals concerning the 501(c)(3) letter. We are not sure if you are requiring organizations that are currently recognized as tax-exempt religious organization to get from the IRS a re-verification of its non-profit status or is CIS now requiring all non-profit religious worker visa sponsors - that have never had a 501(c)(3) letter - to obtain one.

If you mean that all organizations issued 501(c)(3) letters must now obtain a new letter, CSFSO would find this burdensome in light of more readily available documents which would confirm current IRS status, such as IRS Publication 78, Cumulative List of Organizations described in Section 170(c) of the Internal Revenue Code of 1986. This publication is available to all on the IRS's website. Confirmation of current status could also be obtained through intergovernmental channels.

However, re-verification of this status does not tend to support national security except where fraud is an issue, and fraud can be discovered by required on-site inspections. CSFSO would find a requirement to obtain another 501(c)(3) letter especially burdensome due to time delay and cost which such could be avoided by on-site inspections.

If you mean that all organizations must now have a 501(c)(3) letter, canceling the current option to otherwise prove non-profits status, CSFSO believes that this could cause infringement issues besides implementing a change in the statute without congressional approval. Finally, in light of the on-site inspection, this requirement would be redundant.

Due to the diversity of religious beliefs in the United States, CSFSO understands the plight of the immigration officer who, absent 501(c)(3) status, must determine if a religious organization is truly entitled to benefits as a religion, especially if one's personal beliefs differ. However, CSFSO believes that requirements and judgment should be exercised from the viewpoint of national security.

#### Attestation

While CSFSO has no issues with the language of the attestation clause in theory, CSFSO is concerned about the administration of such a clause. While CSFSO and the Church of Scientology as a whole only employ religious workers with appropriate qualifications in bona fide positions, and while the Church is clearly a legitimate organization, CSFSO sees some potential for problems with the regulation as proposed. Specifically, typically R-1 visa holders entering from abroad are being promoted into a position with the church that the visa holders may not have previously held. While within our church we understand the qualifications to enter a position with the church prior to working for our religious organization, we are concerned that CIS will not recognize entry-level religious workers without prior work experience in reviewing qualifications.

#### Evidentiary Requirements for Petitioning Organizations

As a practical matter, the evidentiary reporting requirements for the petitioner are simply unduly burdensome. Scientology is an international religion with numerous churches throughout the world. As such, listing each religious worker, even at a single location; describing each position, rate of pay, and dates of hire; and providing statistics on green card applications related to the religious workers would simply be unduly burdensome. For instance, CSFSO employs over 1,400 people and hundreds of foreign workers, including many workers who are currently green card holders for whom we petitioned. Our workers leave the United States on missions, and therefore, it would be difficult, if not impossible, to track the number of religious workers in the U.S. we may have at any given time. It is unclear why CIS would need such information for an entity as large as ours. Ideally, this provision would be geared toward smaller churches, as the burden on a larger organization, such as our own, is simply onerous.

#### Changes Unique to Immigrant Religious Workers

The proposed regulatory change does now codify and allow for non-immigrant religious workers to have dual intent upon the filing of an I-360 Petition as a Special Religious Worker. This is a laudable regulatory amendment that conforms with Congress's original intent concerning this issue when the religious worker visa category was enacted.

#### Conclusion

CSFSO applauds CIS in attempting to address issues involving fraud in the religious worker program. However, in large part, the proposed regulatory changes do little to address purported fraud and much to unduly burden bona fide religious organizations who are attempting to comply with the program in a transparent and meaningful way. Therefore, as outlined above, CSFSO cannot support many of the proposed changes as they unnecessarily and impermissibly blur the lines between church and state, delay petitions in an area where there are already significant backlogs, and create additional bureaucratic layers that are simply unnecessary.

Respectfully submitted,

Reverend Glen E. Stilo  
Secretary  
Church of Scientology

Flag Service Organization