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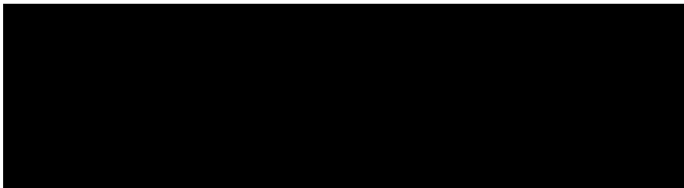
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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Services

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FILE:



WAC 03 089 50646

Office: CALIFORNIA SERVICE CENTER

Date: NOV 02 2006

IN RE:

Petitioner:

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:

SELF-REPRESENTED

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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 dismissed.

The petitioner is the mother 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 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. The director also questioned the petitioner's qualifying status as a tax-exempt religious organization and the authenticity of a key document reproduced in the record.

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).

In a letter dated September 29, 2003, [REDACTED] Legal Officer with the petitioning entity, states that the beneficiary's "job title is that of Religious Films Production Crew Member." [REDACTED] states that the beneficiary "is responsible for the accurate reproduction and dissemination of the ecclesiastical materials of the Scientology religion" at the church's "Golden Era Productions Division. Golden Era Productions produces religious instructional films for the Church, based on the works of the Founder of the religion, [REDACTED]

First, we shall consider the petitioner's status relating to tax exemption. 8 C.F.R. § 204.5(m)(3)(i)(A) requires the

petitioner to submit documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested).

The petitioner's initial submission includes a recognition letter from the Internal Revenue Service (IRS), acknowledging the tax-exempt status of an organization with the same name as the petitioner, but with a different address. The IRS letter shows that the organization's status derives from classification under section 170(b)(1)(A)(i) of the Internal Revenue Code of 1986 (the Code), which pertains to churches. The letter shows an Employer Identification Number (EIN) of 59-2153303.

In a subsequent submission, the petitioner has submitted documentation showing that Golden Era Productions is an offshoot of the petitioning entity. IRS Form W-2 Wage and Tax Statements issued to the beneficiary in 2000, 2001 and 2002 show an EIN of 59-2153393.

On December 6, 2003, the director issued a request for evidence (RFE), in which the director observed that the EIN listed on the IRS determination letter does not match the EIN shown on the beneficiary's Forms W-2. The director also requested "evidence that [the petitioner] is doing business as Golden Era Productions." The director also instructed the petitioner to account for the difference between the address shown on the IRS letter and the address shown on the Form I-360 petition. In response, the petitioner states that the EIN on the IRS letter contains a typographical error. This is a plausible explanation, given that the two EINs differ by only one digit, and that difference is between two numerals, 9 and 0, that are adjacent on a typical typewriter or computer keyboard. The petitioner submits copies of other IRS documents showing the EIN with a 9 rather than a 0 in the disputed position.

The petitioner also submits a copy of a Fictitious Name Statement linking the two addresses shown for the petitioning entity, and establishing that Golden Era Productions is a fictitious business name used by the petitioner. There is no evidence that Golden Era Productions is a legally distinct entity, incorporated separately from the petitioning church.

The director, in denying the petition, quoted from a booklet published by the petitioner. The booklet explains that, under current tax law, a "charitable contribution deduction cannot be claimed to the extent the contributor receives a tangible benefit from his or her contribution." The director, noting that the petitioner sells videocassettes, stated "the very types of products produced by Golden Era Production[s] are not tax-exempt." The director concluded, therefore, that "the petitioner does not qualify for tax-exempt status as a non-profit religious organization."

On appeal, the petitioner observes that the petitioner is unquestionably a qualifying tax-exempt religious organization. The petitioner has indicated that the purpose of Golden Era Productions is thoroughly religious; it is not a secular organization or for-profit corporation with financial ties to the petitioner. Documents in the record amply establish the petitioner's tax-exempt status, and that Golden Era Productions is an integral part of the petitioning corporation, rather than a legally distinct, separate entity or corporation. We hereby withdraw the director's conclusion that the beneficiary's intending employer is not a tax-exempt religious organization.

Next, we consider the nature of the beneficiary's intended work for the petitioner. 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 an affidavit dated January 23, 2003, [REDACTED] a Personnel Officer with the petitioning church, states:

Since 1998 [the beneficiary] has worked for [the petitioner], first in various administrative positions while doing her basic training in the Sea Org, and later as a Personnel Officer. In 1999 she assumed a position in Los Angeles [in] which [the beneficiary] was responsible for promotion and use of Church scriptures and audio-visual training media for our parishioners internationally.

In the year 2000 [the beneficiary] was promoted and expanded her responsibilities to include monitoring and correcting the use of Scientology technical training films and audio visual equipment used by our Churches in the standard application of the religion by parishioners.

In 2001 [the beneficiary] began working in the Church's Dissemination Division, Golden Era Productions. [The beneficiary] has been trained extensively as a member of our Cinematography Department which produces technical instructional films and dissemination videos that are used by Scientology parishioners in our Church[e]s worldwide. . . .

[The beneficiary] has been a member of the Sea Organization since 1998. . . . Each Sea Organization member signs a billion year contract which is a symbolic document and serves

to signify an individual's commitment to the goals, purposes and principles of the Scientology religion.

The director denied the petition, stating that "the production of instructional materials is not necessarily religious in nature. . . . The petitioner has not established that the duties are directly related to the creed of Scientology or that the job constitutes the practice of Scientology. . . . The performance of administrative duties in a religious environment is not equivalent to the performance of duties associated with a religious occupation." The director also concluded that the petitioner had 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 January 24, 2003 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 must also show continuous activity within the vocation during that period. An individual who joins the Sea Org, or any other religious order, but who then experiences lengthy interruptions in his or her work on behalf of that order or works on behalf of a secular and/or for-profit enterprise, cannot be said to have continuously practiced the vocation.

The record contains copies of several certificates, including a "Sea Organization Contract of Employment" (hereinafter "Contract") which reads, in part, "I contract myself to the Sea Organization for the next billion years," signed by the beneficiary and dated November 17, 1997. The Contract contains spaces for two witness signatures, and a separate section for signatures to show that the "Swearing In Ceremony" has taken place. The beneficiary signed under both sections, but there are no witness signatures and there is no recruiter's signature to verify that the oath had been administered. At the bottom of the form, the phrase "Duplicate of original document" has been added by hand, and certified by a personnel officer.

Several of the other certificates show 2001 copyright dates, although a number of the certificates were purportedly issued between 1997 and 2000. A certificate purportedly dated 1995 shows a 2000 copyright date. All of the certificates show the phrase "Duplicate of Original Document" printed in the lower left corner.

In the RFE of December 6, 2003, the director acknowledged the petitioner's submission of a photocopy of the Contract, and instructed the petitioner to "[s]ubmit the original document from which the photocopy was obtained. Do not send another photocopy; do not send an original document different from the one from

which the photocopy was obtained.” The director observed: “The petitioner’s letter indicates the beneficiary became a member of the Sea Organization in 1998. However, the Contract submitted indicates the beneficiary contracted herself to the Sea Organization on November 17, 1997. Please clarify.” The director also requested “detailed explanations” regarding the certificates purportedly issued years before their copyright dates.

In response, the petitioner indicates that the beneficiary’s original documents were all lost, and were subsequently recreated and backdated. The petitioner observes that the documents were all marked as duplicates. The petitioner submits the Contract from which the previously submitted photocopy was made. This document itself contains original signatures and the handwritten annotation “Duplicate of original document.” Because this document itself was labeled as a “duplicate,” even though it is clearly an original document in the sense that it is not a photocopy, the term “duplicate” here can only mean that it is a recreation or reconstruction of an earlier document.

The petitioner also asserts that, while the beneficiary signed the Sea Org Contract in November 1997, she did not begin her service in the Sea Org until 1998. We note the petitioner’s stipulation here that signing the Contract is not coincident with, or therefore proof of, actual service in the Sea Org.

The director, in denying the petition, found that the petitioner had not satisfactorily resolved the perceived documentary discrepancies. Regarding the recreated Contract and certificates, the director stated: “it is unclear how the petitioner was able to make duplicate copies without the originals in its possession. Even so, the fact remains that the petitioner initially submitted documents purported to be issued in 1995, 1996, 1997, 1998, and 2000, when in fact they were not.”

With regard to the anachronistic dates on the certificates, the director appears not to have noticed that the documents were, from the outset, plainly marked as “duplicates”; the petitioner has made no attempt to represent them as original certificates. The director cites no contradictory evidence that would cast doubt on the information shown on these certificates. We see no evidence of fraudulent intent in the petitioner’s submission of these labeled documents. (Such concerns must be addressed case-by-case, rather than with the inflexible *a priori* presumption that reconstructed documents always, or never, denote attempted fraud.)

The record contains certificates and other documents that are consistent with Sea Org membership, and which we would not expect to see associated with individuals who are not full Sea Org members. This preponderance of unrebutted evidence is sufficient to support a conclusion that the beneficiary joined the Sea Org as a full member more than two years prior to the petition’s filing date.

In addition to the basic question of Sea Org membership, the director made another finding relating to the beneficiary’s work history that is not so easily overcome. In the RFE dated December 6, 2003, the director issued these instructions to the petitioner:

Provide evidence of the beneficiary’s work history beginning January 24, 2001 and ending January 24, 2003 only. Provide experience letters . . . that include . . . the employer’s name and address, job title, specific job duties . . . and who supervised the work. . . . Each

experience letter must be written by an authorized official from the specific location at which the experience was gained. The petitioner may only write an experience letter for the experience gained at the petitioner's location.

In response to this notice, the petitioner lists eight trips outside the United States that the beneficiary took during the 2001-2003 qualifying period, to destinations on three continents. The petitioner indicates that the purpose of most of these trips was "filming for the Church," "filming local Ministerial activities," and an "annual Church event" in the Netherlands Antilles. For instance, the petitioner states that the beneficiary was in Russia and Hungary "filming for the Church" almost continuously from January 17, 2002 to May 7, 2002, interrupted only by less than two weeks in the United States in March 2002. The purpose of a three-week visit to northern Europe was "visiting family." The petitioner's response to the RFE did not include any documentation from any of the countries that the beneficiary visited to confirm the purpose of her travel or the nature of the work she performed at those various destinations.

In denying the petition, the director stated: "the petitioner did not submit experience letters written by supervisors or managers in [the various countries] who are in a position to verify the duties performed and hours worked while outside the United States. An experience letter must be written by an individual who has access to personnel records indicating the dates of employment and who is in a position to verify the actual duties performed and hours worked by the employee."

On appeal, the petitioner asserts that "the beneficiary is a member of a team that traveled to different locations working for the [petitioner]. [The adjudicating officer] fabricates out of the blue a scenario whereby the beneficiary would be supervised locally in each area to which she traveled. This is not based on any existing reality other than the Officer's own imagination."

We acknowledge that, on an assignment involving location filming in different countries, one would not necessarily expect there to be local church authorities present to supervise the filming activities. Nevertheless, the fact remains that the beneficiary spent more than a quarter of the two-year qualifying period outside the United States, where church officials in California would not be in a position personally to oversee the beneficiary's activities. The petitioner does not strengthen its position with its stipulation that no church officials at all were on-site to oversee the beneficiary's work.

The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). If church officials in California were not in a position to observe and oversee the beneficiary's work overseas, then other evidence is necessary to confirm that the beneficiary traveled principally on church business (with the exception of a moderate vacation, which would not be considered a disqualifying interruption). Because it is the petitioner's contention that the beneficiary spent most of her time abroad "filming for the Church," the films themselves would represent a contemporaneous record of the beneficiary's activities, along with any logs or other documents that may have been kept at the time to record the progress of filming. Certainly it would be unrealistic to expect the petitioner to submit complete copies of every film that the beneficiary has made during the relevant two-year period, but it would not appear to be a complicated matter to accumulate first-hand evidence to establish her involvement, and the nature of that involvement, in the creation of particular films during the period in question. Here, the petitioner has not

provided the credits from the films; the petitioner has not even identified any of the films that the beneficiary is said to spend almost all of her time making and distributing. The petitioner has offered only the assurance that the beneficiary was making unnamed films, without any evidence that the beneficiary's efforts have yielded even one finished product. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Given this dearth of evidence, we do not fault the director for finding that the petitioner has insufficiently documented the beneficiary's activities during the qualifying period.

For the reasons discussed above, while we withdraw most of the cited grounds for denial, we concur with the director's finding that the petitioner has not adequately accounted for the beneficiary's activities throughout the qualifying period. Church officials in California did not witness the beneficiary's work overseas, and they have produced no first-hand, contemporaneous evidence from the beneficiary's overseas work from which the petitioner, or the director, could reasonably conclude that the beneficiary was continuously performing church business (and thereby engaging in a vocation) during the period in question.

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 sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.