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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

AUG 21 2003

File: WAC 01 218 52698 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
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:
This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is the mother church of an international religious organization. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as a missionary. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a missionary immediately preceding the filing date of the petition.

On appeal, the petitioner asserts that the beneficiary's missionary work began as early as 1992.

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, 2003, 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, 2003, 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 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 regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States." The

regulation indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition."

8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

> (ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:
>
> > (A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on April 30, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a missionary throughout the two-year period immediately preceding that date.

Abel E. Uemura, a legal officer for the petitioner, describes the beneficiary and her work for the petitioner:

> In 1994, [the beneficiary] came to the U.S. on a temporary basis for sabbatical leave to partake of spiritual counseling for her spiritual renewal and redemption. Her only support has been from stipends from the Church of Scientology for Latin America (Federacion de Mexicana de Dianetica) and her meals, housing, clothes, medical and dental care were provided by the Church.
>
> [The beneficiary] has completed her sabbatical leave and obtained redemption in 2001 and was needed by the mother Church in the U.S., [the petitioner], to complete her training and apprenticeship as a missionary so that she can be employed by [the petitioner] and be sent abroad.
>
> This requires a thorough education in the ecclesiastical policies of the Church as well as a complete understanding of Ethics codes and spiritual religious technology. She has been a devoted staff member since 1987 and has successfully held executive positions in several different Churches of Scientology since that time.
>
> [The beneficiary] has been performing a religious occupation, on a volunteer basis, for the Church of Scientology through [the petitioner] since entering the United States on March 28, 1994, as a religious worker per se for seventy (70) hours a week, Monday to Sunday, from 9:00 a.m. to 11:00 p.m., on a continuous and full-time volunteer basis. . . .

> [The beneficiary] has been invited to participate in a special program of training and apprenticeship as a missionary. . . .
>
> [The beneficiary] will also be participating in a special program of training and apprenticeship in the Scientology religious scriptures. . . .
>
> [The beneficiary] is a volunteer staff member of the [petitioning church]. As is true for all Church staff members, who live in community with other staff members, the Church provides [the beneficiary] as part of that community with all food, clothing, transportation and medical and dental care. [The beneficiary] is not eligible for any allowance at this time and is contributing her time on a volunteer basis.

The director instructed the petitioner to submit detailed evidence of the beneficiary's activities and means of support during the two-year qualifying period. In response, the petitioner has offered additional general information about Scientology and its offshoot, the Sea Organization, to which the beneficiary is under contract for one billion years beginning in 1987.

Another legal officer, Eric Jarry, states:

> [The beneficiary[entered the United States on March 28, 1994, on a B-1 Visa as a visitor to the Mother Church on a personal religious retreat seeking spiritual renewal. [The beneficiary] has been in this way on a sabbatical leave for personal redemption on a full time basis over the past several years. She has not engaged in any employment while being in the United States but only sought spiritual guidance and redemption which she has now completed and is ready for active duty. Having completed the above the [petitioner] now wishes to provide her with employment as a Religious Worker.
>
> The redemption program . . . amounted to Seventy (70) hours a week . . . which she spent on her own personal religious devotion and included the receiving and giving of spiritual counseling and an intensive study of the Religious Scriptures. . . .
>
> [The beneficiary] is now being considered to participate in a special Missionary program which will call for her to travel abroad and within the US to designated Churches to carry out ecclesiastical projects assigned to her by the Mother Church. Such missionary projects range broadly from establishing personnel to supervising the standard delivery of the Scientology religious services to our parishioners and the correct application of Church administrative policy in any given Scientology Church around the world.

The director denied the petition, stating that "the beneficiary cannot claim to have the required two years continuous religious work experience immediately prior to the filing of the instant petition" because the beneficiary was an unpaid volunteer, and "[b]ecause the statute requires two years of continuous experience in the same position for which special immigrant classification is sought." The director observed that, during the two-year qualifying period, the beneficiary was not engaged in missionary work.

On appeal, Abel Uemura quotes the statute and states that the beneficiary "came to the U.S. 'solely for the purpose of carrying on the vocation of a minister for that religious denomination.'" Mr. Uemura does not explain how the beneficiary's duties are those of a minister. Mr. Uemura repeats the earlier assertion that, following several years of redemptive sabbatical leave, the beneficiary began "her training and apprenticeship," but he also claims that the beneficiary "has been attending Missionary duties since 1992," such as organizing "an International Scientology Event in recognition of major accomplishments of Scientologists around the world."

Mr. Uemura discusses other tasks the beneficiary undertook prior to her 1994 sabbatical, and then states "[i]n June 2001, [the beneficiary] was involved on a Missionary duty of utilizing printing film technology of computer assisted color separations which is a vital step in the production of any printed matter." The conspicuous gap from 1994 to 2001 supports the director's contention that the beneficiary was not acting as a missionary during that time. It is far from clear that the beneficiary's most recent work with printing technology consists of missionary work. This work appears, from the description offered, to consist of secular tasks that happen to involve the production of printed materials with religious content written by someone other than the beneficiary.

It is significant that nothing submitted prior to the denial, including the initial letter by Mr. Uemura, indicated that the beneficiary was already acting as a missionary prior to the petition's filing date. Instead, early submissions repeatedly stated that the beneficiary was "training" and "being considered" for missionary work. The petitioner has also repeatedly stated that the beneficiary's time during the 1999-2001 qualifying period was occupied with "devotion" and "counseling" rather than missionary work.

The petitioner has indicated that the beneficiary was on "sabbatical" for "several years" beginning in 1994, and that as of the petition's filing date, the beneficiary was "ready for active duty" and preparing to begin "training and apprenticeship" as a missionary. The beneficiary's years of "personal religious devotion and . . . spiritual counseling" during her sabbatical involved profoundly different activities than her planned missionary work traveling to various churches.

It is clear from the petitioner's assertions that the beneficiary was not working as a missionary during the 1999-2001 qualifying period. The director was correct in finding that the beneficiary's activities during that period did not constitute "continuous experience in the same position for which special immigrant classification is sought." Furthermore, "training and apprenticeship" are not a religious occupation; rather, they amount to preparation for future entry into such an occupation. Not only was the beneficiary not a missionary during the qualifying period, it is far from clear that she was fully qualified to be a missionary at the time the petition was filed. The

petitioner cannot file a petition for a student or trainee, on the expectation that the alien will one day qualify for the occupation upon which eligibility rests. Aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971).

While the determination of an individual's status or duties within a religious organization is not under the Bureau's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within the Bureau. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

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.