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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

File: [redacted] Office: TEXAS SERVICE CENTER Date: SEP 10 2003

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)

PUBLIC COPY

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, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner identifies itself as a church. 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 program manager for the sale of medical testing kits. The director found that the petitioner failed to establish: (1) that the beneficiary had the required two years of experience in the job offered immediately prior to the filing of the petition; (2) that the position offered constitutes full-time, permanent employment in a religious occupation; (3) its ability to pay the beneficiary's proffered wage; (4) its exemption from federal income tax; or (5) that the beneficiary entered the United States in order to work for the petitioner.

On appeal, the petitioner submits a letter and work schedule from the beneficiary's claimed former employer in Paraguay. The petitioner requests oral argument. Oral argument, however, is limited to cases where cause is shown. The petitioner must show that a case involves facts or issues of law which cannot be adequately addressed in writing. In this instance, the petitioner has shown no cause for oral argument; the petitioner simply requests "an opportunity to address an officer." We note that the petitioner's written appeal fails to address most of the director's stated grounds for denial. The petitioner's vague assertion that these grounds will be addressed orally is not sufficient cause for oral argument. Consequently, the petitioner's request for oral argument is denied.

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."

In a letter submitted with the petition, executive director of the petitioning organization, describes the petitioner and the beneficiary's role therein:

> Our Ministry has been involved in the development of Social Benevolence and Welfare programs for an extended period of time. Given our international presence, we were granted "Master Distributor" status by for their proprietary instant lab tes
>
> Given [the beneficiary's] vast work experience in international marketing (Brand Manager for 5 of Shiseido's cosmetics lines), translation (Official Supreme Court Translator English/Spanish – Spanish/English) and her wholehearted commitment to the Ministry (as an Instructor for the Theological Bible Institute of the East Church of God, and her local church) we are assured that her collaboration [with] this ministry will prove to be of the highest value.

Mr. asserts that the beneficiary will receive an annual salary of $38,500 plus health insurance, housing, and other benefits.

The first issue under consideration is whether the beneficiary has the required two years of continuous experience in the occupation or vocation immediately prior to the filing date. The regulation at 8 C.F.R. § 204.5(m)(1) 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 March 14, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working in a position similar to the job offered throughout the two-year period immediately preceding that date.

The petitioner seeks to employ the beneficiary as the program coordinator for its Econorapid program, more details about which appear further below.

A copy of the beneficiary's resume in the record states that her career objective is "English-Spanish Teaching and Translation." The beneficiary claims the following employment experience: "Assisting and Cooperating in Legal and Notary Procedures and General English Acknowledgments," 1986-1992; teaching high school and "senior school" English, 1993-1996; and "Brand Manager" of several "Fragrance and Cosmetic Brands" including Shiseido and Carita. Documents in the record corroborate this employment history.

The petitioner submits a "condensed translation" of a letter, dated February 15, 2001, from Rev. [redacted] pastor of the [redacted] in [redacted] The translation indicates that the beneficiary served "as Advisor of the Church (elderly) for more than 2 years. She has also carried out Leader's functions of Young in the Juvenile Pastoral jointly with her husband." Rev [redacted] adds that the beneficiary "has been Teacher of our Theology School." Rev [redacted] concludes by stating that "in the secular field [the beneficiary and her spouse] are very good professionals." The letter does not indicate whether this work was paid or unpaid, or whether it was full-time or part-time.

The director informed the petitioner that the petition would be denied unless the petitioner could demonstrate that the beneficiary had worked for at least two years in a full-time, salaried occupation that constituted a traditional religious function of the petitioner's denomination. In response, the petitioner cites Rev. [redacted] letter, above, and contends that this letter establishes that the beneficiary has worked as a liturgical worker, religious instructor, and religious counselor. As noted above, Rev. [redacted] did not state that the church employed the beneficiary; he merely indicated that the beneficiary performed those functions. If the beneficiary was simply an unpaid volunteer from the congregation, or performed these tasks for only a few hours each week, then she was not continuously engaged in a religious occupation or vocation during the two-year qualifying period.

Mr. [redacted] states that the beneficiary "was a GOVERNMENT CERTIFIED 'translator' for the SUPREME COURT of Paraguay. . . . This documents her performance as a RELIGIOUS TRANSLATOR." This contention is utterly unsupported and unexplained. The Supreme Court of Paraguay is a secular body rather than a religious organization connected with the petitioning denomination, and the record contains no evidence at all that the beneficiary's work as a court translator ever had any significant religious content. The term "religious translator" refers to a

translator of religious documents, rather than a translator who, in her private life, considers herself "religious."

Mr [redacted] asserts that the beneficiary "was a Full-time Minister for her Church as stated by her Senior Pastor in the letter dated the 15th of February 2001." Mr [redacted] clearly refers to Rev. [redacted] letter, but Rev [redacted] never stated that the beneficiary worked full-time, or that that she was a minister. He stated only that the beneficiary was an "Advisor" and "carried out Leader's functions of Young in the Juvenile Pastoral" (the accuracy of this translation is not clear).

Mr. [redacted] also claims "[b]ecause of her (and her Husband's) financial independence, [the beneficiary] never 'collected' her six hundred thousand Guarani salary from the church (equivalent to $171.00), instead she 'donated' those funds." At the time Mr [redacted] first made this claim, the petitioner submitted no supporting evidence.

The director denied the petition, stating that the petitioner has failed to show that the beneficiary received any salary during the two-year qualifying period, and therefore appeared to be "a volunteer [for] a religious organization in her home country." This is the only ground of denial for which the beneficiary has offered any substantive response on appeal. The petitioner submits a new letter jointly signed by Rev [redacted] and [redacted] treasurer and general secretary of the beneficiary's former church in Paraguay. These individuals indicate that the beneficiary worked 38 hours per week teaching biblical theology courses, coordinating Sunday worship, counseling, and performing various other tasks. The schedule includes 15 hours of "preparation" each week, as well several hours of attendance at worship services. Rev. [redacted] and Mr [redacted] assert that the beneficiary "had every right to receive remuneration" for this work, but declined to receive compensation.

Without investigating the credibility of the claims presented in the above letter, we note that the beneficiary must have worked *continuously* as a religious worker throughout the two-year period immediately preceding the filing of the petition on March 14, 2001. Even if the beneficiary was a full-time, salaried religious worker in Paraguay, the record indicates that the beneficiary entered the United States on December 15, 2000, four months before the petition's filing date. The record contains no evidence that the beneficiary was employed in any capacity, religious or otherwise, between her December 2000 arrival and the March 2001 filing date. The petitioner states that the beneficiary has never worked in the United States without authorization, and as a B-1/B-2 nonimmigrant, she would have had no such authorization during the period in question. Given this significant gap, we cannot find that the beneficiary was continuously employed during the two-year qualifying period.

We note also that a religious worker cannot be solely dependent on outside employment for support. If the beneficiary accepted no compensation, as claimed, then she was indeed solely dependent on outside employment throughout the entire qualifying period. The record contains no evidence that the petitioner has ever actually received any remuneration for religious work.

The director also determined "the beneficiary was not employed professionally in the same capacity as the proffered position for at least two years prior to [the] filing [of] the instant I-360 petition." The statute and regulations require two years of continuous experience in "*the*" religious occupation, not "*a*" religious occupation, indicating that the employment during the qualifying period must be essentially the same as the job offered. Even if we were to conclude that the beneficiary's effectively unpaid work for the church in Paraguay amounts to a religious occupation, it is immediately obvious that her duties in Paraguay are significantly different from the duties described in the petitioner's description of the position of Econorapid program director.

The next ground for denial concerns whether or not the position offered constitutes a qualifying religious vocation or occupation. 8 C.F.R. § 204.5(m)(4) states that each petition for a religious worker must be accompanied by a job offer from an authorized official of the religious organization at which the alien will be employed in the United States.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Bureau 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 specific prescribed religious training or theological education is required, 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.

Further, 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).

A job description submitted with the petition contains the following information:

Job Title:	Program Coordinator
Reports To:	Executive Director
Category:	Executive
Pay Rate:	Twenty dollars an hour ($20.00)
Program:	ECONORAPID™
Schedule:	9:00 am to 5:00 pm, Monday-Friday
Experience:	5 years
Educational Requirements:	Business Administration, International Business Relations, Educational, Theological

The "Summary of Responsibilities" section of the job description states:

> The Program Coordinator will be the executive that provides direction to the National Directors of each country with the necessary information for all aspects of function ability. This includes but is not limited to: All aspects of Accounting requirements, Social Benevolence, Ecclesiastical Education, and whenever necessary Regulatory Compliance.

The job description concludes with a "Detailed List of Responsibility," which includes such factors as "Prepares all internal communications," "Coordinates promotional activities," and "Supervises (and Approves) all Program Fundraising activities." The list does not identify any responsibilities of an unambiguously religious nature. Instead, the duties are all of an administrative or supervisory nature.

The petitioner submits background evidence regardin and Mr. asserts "this product is an excellent outreach tool. We truly believe that [the beneficiary] meets both the Administrative/Executive requirements as well as the Spiritual/Religious demands of this position."

A certificate in the record states that as granted the petitioner as "The Sole Right To Distribute And Sell All Rapid In-Vitro Immunodiagnostic And Clinical Reagent Tests." The petitioner submits a promotional flier for The flier is in Spanish, with no translation provided, but the illustrations in the flier do not include any religious imagery. Instead, the flier is illustrated with photographs depicting a laboratory worker; beakers full of chemicals; and a hypodermic needle. These illustrations do not readily suggest any significant "theological," "ecclesiastical," or "Spiritual/Religious" aspect to the marketing of Econorapid.

The beneficiary's resume, discussed above, indicates reflects the beneficiary's employment as a translator, English teacher, and cosmetics brand manager, but it does not reflect employment in any religious vocation or occupation. Under "Education," the resume lists courses in accounting, computers, English, and pedagogy, but it lists no courses in theology, divinity, or any plainly religious subject matter. The petitioner submits copies of numerous diplomas and educational

certificates, going back to the beneficiary's high school diploma. These documents all, without exception, pertain to secular education in the subjects named on the beneficiary's resume.

In response to the director's request for evidence showing that the proffered position is religious in nature, Mr[redacted] states:

> **ALL** of the programs and projects we perform are **'OUTREACH TOOLS'** of the Ministry. . . .
>
> [T]his Church has endeavored to Minister to 'those things which are needful to the body.' We are heavily involved in providing medical assistance in Central & South America as well as the Caribbean. . . . But the fact that we Minister to their physical needs DOES NOT EXCLUDE the Ministering to their SPIRITUAL needs. [The beneficiary] will coordinate both aspects as is clearly defined in the Job Description, *Part III. Detailed list of Responsibilities:*
>
> *Maintains Program Master Calendar (This includes all evangelistic crusades in the work areas).*
> *Coordinates promotional activities (This includes rallies, church outings, etc.)*
> *Recruits and schedules volunteer workers (These are our outreach ministry teams)*
> *Schedule all Educational events (these are training sessions of the Church outreach)*
>
> The list could be quite extensive but, we believe that the point has been made, ALL of the functions that [the beneficiary] will be performing for us ARE directly related to ECCLESIASTICAL service, thus she does qualify in a 'Religious worker' category.

(Emphasis in original.) The petitioner's assertion that "ALL of the functions" of the Econorapid program coordinator are "directly related to ECCLESIASTICAL service" is not persuasive. The examples provided above appear to be highly tenuous, such as the claim that "promotional activities" pertain not to the sale and distribution of Econorapid products, but rather "church outings." The job description contains only one mention of religious activity, in its reference to "Ecclesiastical Education."

The director denied the petition, stating that the record does not establish that the position is full-time, permanent, or even religious in nature. The director found that the beneficiary's employment history, and the position offered, reflect predominantly secular, business-oriented employment. The petitioner, on appeal, has not contested this finding or otherwise addressed this issue. Upon review, we find that the director ruled correctly in this regard. The beneficiary's position, as described, is clearly dedicated first and foremost to the marketing and sale of medical test kits. The petitioner has provided no credible evidence or argument to establish that this work is primarily religious in nature. We further note that, pursuant to 8 C.F.R. § 204.5(m)(2), fund raising is specifically excluded from the definition of what constitutes a religious occupation.

Thus, even if the sales of Econorapid products are intended for the purpose of raising funds for the petitioner's religious purposes, the beneficiary would still fall outside the classification of special immigrant religious workers.

The next issue concerns the petitioner's ability to pay the beneficiary's proffered salary of $38,500 per year. The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner's initial filing contained no evidence regarding the petitioner's financial status. Accordingly, the director informed the petitioner that the petition would be denied unless such evidence was submitted. In response, the petitioner submits "a notarized letter from one (1) of our corporate sponsors, clearly pledging a substantial amount of funds (Five million four hundred twenty thousand six hundred twenty five dollars)."

The director, in denying the petition, observed that the beneficiary's salary is entirely contingent on a corporate sponsor, which in turn has provided nothing to show its own ability to pay the salary offered. The director found that the record contains no documentation to establish the petitioner's ability to pay the salary offered. On appeal, the petitioner offers no response to this finding. Because the petitioner has already gone on record as stating that the beneficiary's salary will derive from future payment of pledges, the petitioner has effectively stipulated that those funds are not yet available and were not available as of the filing date.

The above-cited regulation at 8 C.F.R. § 204.5(g)(2) states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. A notarized letter, containing a pledge of future funding, is not a tax return, audited financial statement, or annual report. Furthermore, the petitioner must be able to pay the proffered wage as of the petition's filing date. A pledge, even if shown to be legally enforceable (which is not the case here), represents only a promise to pay at some point in the future. It does not establish that the petitioner already had the resources available to pay the beneficiary's salary on the March 14, 2001 filing date.

The next issue concerns the petitioner's status as a qualifying tax-exempt religious organization. The regulation at 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

(A) 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); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The initial filing contained no evidence that the petitioner is a religious organization exempt from federal income tax pursuant to section 501(c)(3) of the Internal Revenue Code of 1986. The director informed the petitioner that the petition would be denied unless the petitioner submitted this evidence.

Subsequently, the petitioner has submitted a copy of its certificate of exemption from the Florida Department of Revenue, but this document establishes only that a "phys[ical] place for worship" owned by the petitioner is exempt from state property tax and sales and use tax. The petitioner also submits a portion of the instructions to Internal Revenue Service Form 1023, indicating that churches "are not required to file Form 1023" because "[t]hese organizations are exempt automatically if they meet the requirements of section 501(c)(3)."

The above-cited regulations at 8 C.F.R. § 204.5(m)(3)(i)(A) and (B) plainly require the petitioner to submit either 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, or such documentation as is required by the Internal Revenue Service to establish eligibility for that exemption. The documentation described at 8 C.F.R. § 204.5(m)(3)(i)(B) includes a *completed* Form 1023, whether or not the organization then *submits* that form. The assertion that the petitioner considers itself to be a church cannot suffice in this regard, particularly in a situation such as the matter at hand in which the petitioner is exclusively responsible for the marketing of medical products. As with other cited grounds of denial, the petitioner's appeal submission, as contained in the record, offers no response or rebuttal to the director's finding.

The final cited ground for denial concerns the circumstances of the beneficiary's entry into the United States. The beneficiary entered the United States on December 15, 2000, as a B-1/B-2 nonimmigrant. The petitioner has indicated that the beneficiary did not initially enter the United States for the purpose of working for the petitioner. In denying the petition, the director stated "it [cannot] be determined that the beneficiary's sole purpose for entering the United States was to work for the [petitioning] organization. Documents submitted by the petitioner clearly state that the beneficiary did not have the intent to be employed by their organization or any other." The director concluded, therefore, that the beneficiary did not enter the United States to work in a religious occupation or vocation.

The director appears to rely on the statutory language at section 101(a)(27)(C)(ii) of the Act, which defines a special immigrant religious worker as an alien who "seeks to enter the United States" to work

as a minister or other religious worker. The director's apparent interpretation of the phrase "enter the United States" is in conflict with published, promulgated policy. Supplementary information published with the final rule implementing changes to 8 C.F.R. § 204.5(m)(1), published at 60 Fed. Reg. 29751 (June 6, 1995), states in pertinent part:

> Section 101(a)(13) of the Act provides that an "'entry' means any coming of an alien into the United States." Reading section 101(a)(27)(C)(ii) of the Act in conjunction with section 101(a)(13) of the Act, it is clear that not only must the religious worker apply for admission to the United States as an immigrant before October 1, 1997, but he or she must actually seek to "come into," i.e., arrive in the United States with an immigrant visa before October 1, 1997.[1]

From the above interpretation, it is clear that the statutory language stating that the alien "seeks to enter the United States" as a religious worker refers not to the alien's first admission into the United States, but rather to the alien's adjustment of status or entry under an immigrant visa. Furthermore, the statutory definition refers to "an immigrant who . . . seeks to enter the United States." An alien seeking an immigrant classification is, by definition, not yet an immigrant, and the phrase "seeks to enter" clearly applies to a future event, rather than an alien's past admission into the United States.

The alien's prior lawful admissions into the United States are without consequence in and of themselves, provided the alien intends to enter the United States as a religious worker upon becoming an immigrant and provided those admissions are not, by their nature, *prima facie* evidence of ineligibility (for instance, by demonstrating an interruption in the beneficiary's religious employment.) There is no statutory or regulatory requirement that an alien seeking classification as a special immigrant religious worker must have initially entered the United States as a nonimmigrant religious worker or with the intention of seeking to immigrate as a religious worker. That being said, the other findings still stand regarding the extent to which the beneficiary's past and present experience fail to qualify as religious work.

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.

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[1] The 1997 dates above have since been extended to 2003.