

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

FILED

FEB 12 2003

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CHURCH OF SCIENTOLOGY OF)
LOS ANGELES)
4810 Sunset Boulevar)
Los Angeles, California 90027)

Plaintiff)

v)

JOHN D. ASHCROFT,)
ATTORNEY GENERAL,)
U.S. IMMIGRATION AND)
NATURALIZATION SERVICE, IN HIS)
OFFICIAL CAPACITY)
425 Eye Street, NW)
Washington DC 20536)

MICHAEL GARCIA,)
ACTING COMMISSIONER,)
U.S. IMMIGRATION AND)
NATURALIZATION SERVICE, IN HIS)
OFFICIAL CAPACITY)
425 Eye Street, NW)
Washington DC 20536)

DONA COULTICE,)
SERVICE CENTER DIRECTOR)
CALIFORNIA SERVICE CENTER)
U.S. IMMIGRATION AND)
NATURALIZATION SERVICE)
IN HER OFFICIAL CAPACITY)
24000 Avila Road, 2nd Floor)
Laguna Niguel, California 92607)

DEFENDANTS)

CASE NUMBER 1:03CV00231

JUDGE: Richard J. Leon

DECK TYPE: General Civil

DATE STAMP: 02/12/2003

COMPLAINT FOR WRIT OF MANDAMUS

1. Plaintiff, CHURCH OF SCIENTOLOGY OF LOS ANGELES,
by and through the undersigned counsel, files this

Complaint for Mandamus seeking to compel the Defendants to adjudicate the Special Immigrant Religious Worker (I-360) petition they filed on behalf of Michael Pocielj, a national of Poland. This petition was received by the California Service Center on July 26, 2001.

JURISDICTION

2. This is a civil action, brought pursuant to 8 U.S.C. §1391 and 1361, to redress the rights, privileges, and immunities secured by Plaintiff, by which status jurisdiction is conferred, and to compel Defendants to perform a duty Defendants owe to the Plaintiff.

VENUE

3. Venue is proper in this case pursuant to 28 U.S.C. §1391(e), in that this is an action against officers of the United States in their official capacities, brought in the District where a Defendant John Ashcroft resides and where the U.S. Immigration and Naturalization conducts business.

PARTIES

4. Plaintiff CHURCH OF SCIENTOLOGY OF LOS ANGELES is a religious corporation under the laws of the State of California. It is a subordinate organization of the Church of Scientology International.

5. Defendant JOHN D. ASHCROFT is the U.S. Attorney General and is delegated administration of the U.S. Immigration and Naturalization Service ("INS"), the federal agency within the U.S. Department of Justice responsible for the lawful administration and implementation of the Immigration and Nationality Act ("INA").

6. Defendant MICHAEL GARCIA is the Acting Commissioner of the U.S. Immigration and Naturalization Service and is appointed by the President and delegated by the U.S. Attorney General, the responsibility of ensuring the lawful administration and implementation of the Immigration and Nationality Act ("INA").

7. Defendant DONA COULTICE is the District Director of the California Service Center of the U.S. Immigration and Naturalization Service and is charged by law with statutory obligation to adjudicate Plaintiff's Petition for Special Immigrant Religious Worker ("I-360 Petition").

EXHAUSTION OF REMEDIES

8. Plaintiff has exhausted their administrative remedies. Plaintiff, has, submitted all the necessary requirements and additional documentation requested by the Service.

FACTUAL ALLEGATIONS

9. On October 8, 1996, a Warrant of Arrest was issued for Michael Pociiej for not appearing at his scheduled Deportation Hearing. Mr. Pociiej never received this Notice of Hearing hence, he was not aware that he was being summoned by the Immigration Court. (Exhibit 1.)
10. On May 16, 1997, Mr. Pociiej's counsel filed for a Motion to Reopen and Stay of Deportation based on the fact that Mr. Pociiej was never served the Hearing notice. (Exhibit 5.)
11. On June 24, 1997, the Immigration Judge granted Mr. Pociiej's Motion to Reopen and issued a hearing notice for September 5, 1997. (Exhibit 7.)
12. On June 12, 1998, the INS California Service Center received the Special Immigrant Religious Worker (I-360) petition filed by the Church of Scientologists in Los Angeles on behalf of Michael Pociiej (Exhibit 10.);
13. Approximately six months (i.e., January 8, 1998) after the INS received the I-360 petition, a follow up letter was sent by the undersigned counsel's office to follow up the status (Exhibit 13.)
14. A year after the INS received the I-360 petition (i.e., July 8, 1999), another follow up letter was

sent by the undersigned counsel's staff to follow up its status (Exhibit 15.)

15. A year and a half from when the INS received the I-360 petition (i.e., January 7, 2000), another follow up letter was sent to the CSC by the undersigned counsel's staff following up its status (Exhibit 17.)
16. Meanwhile, the deportation proceedings has had scheduled hearings between July 28, 1997 until July 8, 1999
17. On November 26, 2000, the undersigned counsel submitted to the California Service Center by Federal Express additional documentation after receiving a "live person" response from the Center requesting for additional information. (Exhibit 22.)
18. On June 27, 2001, another follow up letter was sent to the California Service Center regarding the June 12, 1997 I-360 petition. This time, the Service Center replied by indicating on the same cover page that the petition was denied due to "abandonment". (Exhibit 26.)
19. Sometime after June 27, 2001, we received a letter from the California Service Center dated August 10, 2000 indicating that they have denied the I-360 petition in question since the Petitioners never responded to the additional evidence

requested by the Service. Please note that neither the Plaintiff nor the undersigned counsel receive any Request for additional evidence.

20. On July 26, 2001, the Plaintiff filed its 2nd Petition for Special Immigrant Religious Worker (I-360) on behalf of Michael Pocielj. (Exhibit 27.)
21. On February 2, 2002, the undersigned counsel received a Notice of Action requiring additional documentation regarding the I-360 immigrant petition filed by the Church of Scientologists of Los Angeles. (Exhibit 29.)
22. On May 9, 2002, the undersigned counsel submitted to the California Service Center its Response to the February 2, 2002 Notice of Action. (Exhibit 30.)
23. The Beneficiary of this I-360 petition, Mr. Michael Pocielj, is scheduled for a hearing before the Los Angeles Immigration Court on February 27, 2003 to deliberate what other form of relief is available to him.

COUNT I

MANDAMUS AS AGAINST ALL DEFENDANTS

28 U.S.C. § 1361

24. Plaintiff incorporates the allegations contained in ¶ 9 through 21 as if alleged herein.
25. The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the Plaintiff. 28 U.S.C. § 1361.
26. Defendants are charged by law with the duty of adjudicating Plaintiff's Special Immigrant Religious Worker (I-360) petition.
27. Further delay in the adjudication of the Plaintiff's petition is unnecessary and unreasonable, as the Plaintiff has provided the California Service Center all the documentation and information supporting its petition.
28. The Church of Scientology, Los Angeles suffered harm due to the INS' delay in adjudicating their petition. They need the services of Mr. Pocielj and they cannot hire him unless they are given authority by the INS to commence the employment.

COUNT II

ATTORNEY'S FEES AND COURT COSTS

Equal Access to Justice Act

28 U.S.C. 2412(d) (1) (A)

29. Plaintiff incorporates the allegations contained in Paragraphs 9 through 21 as if alleged herein.

30. Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust. 28 U.S.C. 2412 (d) (1) (A).
31. Upon the issuance of a writ of mandamus against one or all Defendants, the Church of Scientology, Los Angeles will be a "prevailing party" and will be entitled to recover attorney's fees and costs of this Court for this action.


PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

- Compel the Defendants to perform their duty to adjudicate Plaintiff's Petition for Special Immigrant Religious Worker (I-360);
- Award attorney's fees and costs of Court; and

- Award such other and further relief that this Court deems proper under the circumstances.

Respectfully submitted,



Robert L. Oswald ✓
D.C. Bar 364446
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CHURCH OF SCIENTOLOGY
OF LOS ANGELES

LIST OF EXHIBITS

- 1 10/08/96 Warrant of Arrest issued for Michael Pocielj by the INS and Order to Show Cause and Notice of Hearing
- 2 01/08/97 Order from IJ Harry L. Gastley Deporting Mr. Pocielj for not appearing at the scheduled Deportation Hearing.
- 3 01/22/97 Notice of Country to which Deportation has been directed (Form I-294) signed by the District Director
- 4 04/23/97 Bag and Baggage letter instructing Mr. Pocielj that he should depart from the United States on May 19, 1997 from Los Angeles, California.
- 5 05/16/97 Respondent's counsel filed a Motion to Reopen and Stay of Deportation.
- 6 05/29/97 Government's Response to Motion filed by the Respondent's Counsel.
- 7 06/24/97 Motion to reopen granted (handwritten confirmation on upper right side of page)
- 8 07/28/97 Notice of Master Hearing scheduled form September 5, 1997 @8:30 am

- 9 03/09/98 Notice of Master Hearing scheduled on June 24, 1998
- 10 06/12/98 Copy of I-360 Petition filed by the Church of Scientology, Los Angeles on behalf of Michael Pocielj and subsequent Receipt Notice issued by the California Service Center. Please note that the Receipt Notice was dated June 12, 1998.
- 11 06/24/98 Notice of Master Hearing scheduled on September 25, 1998
- 12 09/25/98 Notice of Master Hearing scheduled on January 29, 1999
- 13 01/08/99 January 8, 1999 letter to the Western Service Center following up the status of the I-360
- 14 01/29/99 Notice of Master Hearing scheduled for March 15, 2000
- 15 07/08/99 July 8, 1999 follow up letter to Western Service Center re: Plaintiff's I-360 petition received by the Service Center on June 12, 1998
- 16 07/08/99 July 8, 1999 letter to the US Department of Labor following up status on Alien Labor Certification application filed on behalf of Mr. Pocielj

- 17 01/07/00 January 7, 2000 letter to Victor Sanchez, Duty Officer at the California Service Center sent by facsimile transmission following up I-360 petition received by the Service on June 12, 1998
- 18 02/23/00 February 23, 2000 follow up letter to the California Service Center re: I-360 filed and received by the Center on June 12, 1998.
- 19 03/02/00 Undersigned counsel filed a Motion to Continue the March 16, 2000 hearing
- 20 08/02/00 Notice of Master Hearing scheduled on December 15, 2000
- 21 08/10/00 August 10, 2000 letter from the California Service Center denying the Special Immigrant Religious Worker (I-360) petition filed by the Church of Scientology, Los Angeles on behalf of Michael Pocij. The Service Center cited the reason that the petitioner "abandoned" the petition since it did not respond to a Notice of Action. A copy of this letter never reached our office until after July of 2001.
- 22 11/16/00 November 16, 2000 letter to California Service Center wherein the undersigned counsel forwarded additional documents the INS requested in a rare person-to-person response to the following up of the I-360 petition.
- 23 11/17/00 Motion to Continue hearing scheduled for December 15, 2000

- 24 11/29/00 Notice of Master Hearing scheduled for July 27, 2001
- 25 12/29/00 Notice of Master Hearing scheduled for July 27, 2001
- 26 06/27/01 June 27, 2001 follow up on the I-360 petition filed and received by the California Service Center on June 12, 1998. Same facsimile cover page came back indicating that the petition has been denied.
- 27 07/26/01 Copy of the 2nd Special Immigrant Religious Worker (I-360) petition by the Church of Scientology, Los Angeles on behalf of Michael Pocielj dated July 17, 2001 and subsequently received by the California Service Center on July 26, 2001.
- 28 07/27/01 Notice of Individual Hearing scheduled for February 3, 2003.
- 29 02/21/02 February 21, 2002 Notice of Action - Request for Additional Documents by the California Service Center re: I-360 petition they received on July 26, 2001.
- 30 05/09/02 Response to Notice of Action