



U.S. Citizenship
and Immigration
Services

01

[REDACTED]

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **AUG 02 2004**

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

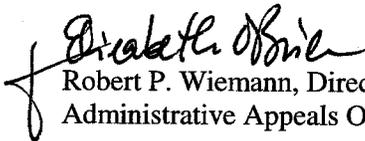
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[REDACTED]

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.


Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The Director, California Service Center initially approved the special immigrant religious worker petition. On further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and the reasons therefore, and exercised his discretion to revoke the approval of the petition on December 1, 2003. The petitioner filed an appeal to this decision. The director determined that the appeal was untimely filed, rejected the appeal, and treated it as a motion to reopen, pursuant to the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2). The director granted the motion and again revoked the approval of the petition on January 13, 2004. The petitioner again appealed this decision, and the petitioner's timely appeal is now before the Administrative Appeals Office (AAO) for review. The AAO will dismiss the appeal.

The petitioner is a subsidiary church of the Church of Scientology International. 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. In addition, the director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary, or that the petitioner is able to afford the beneficiary's compensation.

On appeal, counsel maintains that the first appeal was, in fact, timely and should not have been rejected. This issue is moot, because the director has already reopened the matter and issued a new decision. The petitioner submits a substantial quantity of documents, some of which duplicate prior submissions.

Section 205 of the Act, 8 U.S.C. 1155, states: "The Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988). The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

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 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) 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)(ii)(A) requires the petitioner to demonstrate 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 September 19, 2000. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a missionary throughout the two years immediately prior to that date.

The initial filing of the petition contained no documentary evidence of the beneficiary's activities during the 1998-2000 qualifying period. The director erred in initially approving the petition without such evidence. In the notice of intent to revoke and in the revocation notice itself, the director concluded that the petitioner had not submitted sufficient documentary evidence to establish the beneficiary's continuous experience throughout the qualifying period.

The director acknowledged affidavits from individuals who saw her at work. The director determined that some of these affidavits do not cover the necessary time period (which began in 1998), and none of them demonstrate that the work the beneficiary performed constitutes qualifying religious work. We shall address, further below, the question of whether the beneficiary's work is qualifying in nature. First, we shall consider the question of the beneficiary's experience.

The petitioner has submitted Forms W-2 Wage and Tax Statements, showing that the petitioner paid the beneficiary \$2,392.00 in 1999, \$3,070.43 in 2000, \$3,329.05 in 2001, and \$3,614.46 in 2002. The qualifying period began in September 1998, and therefore the Forms W-2 do not cover the entire qualifying period.

Regarding the affidavits from co-workers, [REDACTED] states that he met the beneficiary in 1996, when he and the beneficiary were working for the Church of Scientology International. [REDACTED] states that she met the beneficiary "approximately two years before she and I arrived here in Clearwater, Florida," but she says nothing about the beneficiary's activities before the beneficiary moved to Clearwater in 1999. Lisa [REDACTED] states that the petitioner "arrived at [the petitioning entity] in the year 2000 and I have worked with her on a daily basis since." This last assertion (1) does not address 1998 or 1999 and (2) conflicts with other affidavits that indicate the beneficiary arrived at the petitioning facility in 1999, not 2000.

Sara Asay states:

In April of 1997, [the beneficiary] came to the United States to attend religious seminars concerning her work with the Church of Scientology in England, and remained here for eight months. . . .

[The beneficiary] was sent to the Church of Scientology International in December 1998, and conducted a Missionary project concerning Church social betterment programs. . . . She continues working on these Missionary projects today.

A subsequent affidavit by [REDACTED] the petitioner's senior personnel officer, contains almost exactly the same language. Neither affidavit accounts for the beneficiary's activities between December 1997 and December 1998.

The petitioner has submitted very detailed payroll evidence from 2000 and afterwards, which only serves to emphasize the lack of documentation from 1998. We concur with the director that the witness affidavits contain vague and conflicting information regarding the beneficiary's work during the early months of the two-year qualifying period.

We turn now to the issue of the nature of the beneficiary's work for the petitioning entity. 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 director disagrees with the petitioner's assertion that the beneficiary's work with the [REDACTED] constitutes a religious vocation. 8 C.F.R. § 204.5(m)(2) defines a "religious vocation" as 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 director noted that the [REDACTED] according to its own documents, "has no formal or informal ecclesiastical or other management structure," and "is not an 'organization' or 'entity.'" The director acknowledged that "the Sea Organization may have characteristics of a traditional religious order," but the director concluded that "the Sea Organization itself demonstrates no provision for the life-long support of its members; no formal legal organizing document, or governing structure" such as those found in recognized religious orders.

In response to the director's finding that the petitioner has not shown that the [REDACTED] is a qualifying religious order, [REDACTED] the petitioner's director of Internal Affairs, asserts that the director has unconstitutionally intruded on internal church matters. While the determination of an individual's status or duties within a religious organization is not under the purview of Citizenship and Immigration Services (CIS), the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within CIS. 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 AAO has no authority to decide constitutional issues, but the petitioner has cited no case law to show that the government violates the free exercise clause of the First Amendment by exercising its discretion to decide who does, and who does not, qualify for immigration benefits. Counsel has also failed to explain why special treatment of religious workers would not violate the establishment clause. The nation's immigration laws exist in service of a pervasive, secular purpose, and religion provides no immunity from those laws.

The director determined that the documents from the [REDACTED] do not establish the beneficiary's lifelong commitment, as required for a finding that she works in a religious vocation. The director observed that the record contains a "Declaration of Religious Commitment and Membership in the Sea Organization," but the director determined that this document has little evidentiary value because it is unsigned.

[REDACTED] stresses the "clearly non-temporal language" of the beneficiary's contract with the [REDACTED] and asserts that the document is "a religious vow" and thus *prima facie* evidence that the beneficiary carries on a religious vocation. [REDACTED] states that the beneficiary has taken "a vow to follow the orders of a superior cleric, which compared to other monastic orders, is one of the oldest and traditionally historic rules of [REDACTED]". The petitioner offers no objective evidence to establish that joining the [REDACTED] is, in fact, comparable in any meaningful sense to becoming a Benedictine monk.

Because the petitioner has attempted to represent membership in the [REDACTED] as being comparable to being a Roman Catholic monk, it is illuminating to examine the process by which one becomes a Catholic monk. We turn, therefore, to reference materials available to the public via the World Wide Web. A document entitled "Monastic Formation," available at <http://www.theramp.net/stbede/formatio.htm>, states that an individual wishing to become a monk must be "[a]t least 21 years of age and/or have a college degree," and "[h]ave a degree of emotional and spiritual maturity." The document lists several intermediate steps which an aspiring monk must complete prior to becoming a monk: *candidacy*, in which a candidate visits a monastic community to discern whether he has a calling to the vocation; *postulancy*, a three-month to two-year period during which the postulant resides within the community and becomes familiar with the monastic life; *novitiate*, in which the novice "studies monastic life in greater depth . . . for a period of one year"; and *juniorate*, in which the junior monk takes temporary vows that bind him for only three years. Following the three years, the junior monk takes his final vows and only then is he permanently committed to the monastic life within the order. At the end of each stage, the community evaluates the individual's progress, and only with the community's consent does the individual advance to the next step.

The page <http://www.anselm.edu/administration/The+Abbey/BecomingaMonk>, at [REDACTED] website, states: “[i]t is during this prolonged period of juniorate formation that the monk strives to reach a degree of human and spiritual maturity which allows him . . . to respond freely and responsibly to God by pronouncing ‘solemn vows.’” To study to be a monk at [REDACTED] one must be “usually between the ages of 22 and 35 . . . and must manifest both a sincere desire and the requisite maturity.”

The beneficiary, born in 1978, was only fifteen years old when she signed a “Contract of Employment” (Contract) with the Sea Org in 1993. The Contract reads, in its entirety:

I, _____ DO HEREBY AGREE to enter into employment with the SEA ORGANIZATION and, being of sound mind, do fully realize and agree to abide by its purpose which is to get ETHICS IN this PLANET AND UNIVERSE and, fully and without reservation, subscribe to the discipline, mores and conditions of this group and pledge to abide by them.

THEREFORE, I CONTRACT MYSELF TO THE [REDACTED] FOR THE NEXT BILLION YEARS.

(As per Flag Order 232)

There is no evidence that signing the billion-year Contract with the Sea Org requires the same lengthy period of study, formation, and mature reflection that is required to permanently join a religious order.

As is reflected in the materials about monastic formation cited above, *maturity* is a critical factor in one’s making the permanent commitment to religious life. A “calling to religious life” required by the regulation at 8 C.F.R. § 204.5(m)(2) is not merely a desire to work for one’s church, but a deeper sense of commitment and duty, evident only upon sustained reflection. A lifetime commitment to the ways of a religious order is one of the most important, if not *the* most, important decisions that a person of faith can make; it shapes the course of the remainder of that individual’s life. A fifteen-year-old is not generally considered to have sufficient maturity or responsibility to drive an automobile, drink alcohol, vote, or sign a legal contract. The record offers no evidence that, at the time the [REDACTED] accepted the beneficiary’s signature on the billion-year Contract, the organization had made any concerted effort to ascertain the depth of the beneficiary’s calling, or that the beneficiary’s signing this document was the result of a sustained formation period, as is the case with vocations in other religions. The issuance of a certificate or similar document is not *prima facie* evidence that one is engaged in a qualifying religious vocation. See *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

The petitioner has never claimed or shown that it is a rare anomaly for an individual to be a minor at the time of signing the [REDACTED] Contract. Rather, an unattributed document entitled “The Sea Organization: The Religious Order of the Church of Scientology” states, in pertinent part:

There is no age limit for joining the [REDACTED] . . . But there are restrictions for signing a declaration or contract with the local churches. If a person is under the legal age limit of the country he must get full parental agreement and meet any employment laws of the land. In some cases the [REDACTED] may have members who are in their teens. . . . All Churches abide by the laws of the country in which they are located. In keeping with our theology that each person has “lived before” it is not unusual to have teenagers realize early on that they wish to continue their work in the Sea Organization.

The [REDACTED] indisputably permits minor children to sign the "Contract of Employment," and there is minimal preparation for signing that document. If the Contract were the actual instrument of membership, then we could not conclude that membership in the [REDACTED] is a qualifying religious vocation. Other materials in the record, however, indicate that signing the Contract does not automatically or immediately establish membership in the [REDACTED]

The petitioner submits an excerpt from "A Contemporary Ordered Religious Community: The Sea Organization," by [REDACTED]. The essay is a chapter in *New Religious Movements and Religious Liberty in America* (Derek H. Davis and Barry Hankins, eds., 2nd ed., 2003). The essay is not an official church document, but by submitting the essay into evidence without any disclaimer, the petitioner has effectively endorsed the statements therein. [REDACTED] states:

The process of joining the [REDACTED] has become somewhat institutionalized. In most instances, it begins with a public meeting in a Scientology church facility in which a [REDACTED] representative presents a profile of the work of the organization and invites interested attendees to consider joining. . . .

At the close of the meeting, those who express an interest in the Sea Org are invited to consider making an initial commitment in the form of signing what has come to be known as the billion-year "commitment." This brief document is actually a letter of intent of offering oneself for service in the [REDACTED] and to submit to its rules. . . .

After the signing of the commitment document, which is largely of symbolic import, the individual is given a period of time to consider their decision. . . . I have talked to members who waited as long as three or, in one instance, even six years before taking the next step which is to report to the [REDACTED] induction program, called the Estates Project Force (EPF). . . .

The completion of the EPF program takes from two weeks to several months. . . . Included in the program is a rigorous daily routine of work and study that introduces people on an experiential level to the nature of the commitment being asked of them. . . .

Following the completion of the EPF program, the recruit makes a final decision to continue, church personnel make a final assessment of the recruit's worth to the organization, and the person is accepted into the [REDACTED]. If the person has not already done so, he or she now participates in a formal swearing-in ceremony that includes the reading of the "Code of a Sea Org Member," sentence-by-sentence, and his or her verbal assent to each clause. . . .

Each Sea Org member reaffirms that acceptance in a formal ceremony annually on 12 August, the anniversary of the founding of the Organization.

The above essay indicates that the billion-year Contract is largely symbolic, and that signing it does not make the signer a member of the [REDACTED]. Rather, the essay states that one is not a [REDACTED] member until after one has completed the EPF program and ceremonially read the "Code of a [REDACTED] Member" (Code). This statement is corroborated by the presence of another document in the record, the "Declaration of Religious Commitment and Membership in the Sea Organization" (Declaration), which is considerably more involved than the billion-year

Contract. The Declaration contains several clauses that spell out the nature of the member's obligations to the church.¹

Given the description of the process of training and evaluation that one must undergo before the church will accept a candidate as a member of the [REDACTED] and given various general similarities between the life of a Sea Org member and that of members of other religious vocations, it appears that full membership in the Sea Org, following the EPF program, reading of the Code, and execution of the Declaration, can qualify as a religious vocation. The burden is on the petitioner to establish that a given alien has completed *all* of these necessary steps. We stress that a signed billion-year Contract is *not* sufficient evidence of membership in the Sea Org, and thus is not evidence of a religious vocation, as is proved by the documentation the petitioner submitted to CIS for consideration.

The petitioner, as noted, had previously submitted an unsigned Declaration. The petitioner has now submitted a second copy of the Declaration, executed and signed by the beneficiary and by payroll officer Pat Sanders. Both signatures are dated February 13, 2002, after the filing of the petition. We shall return to this issue later in the decision.

Having found that the beneficiary's position does not constitute a qualifying religious vocation, the director addressed the question of whether that position qualifies as a religious occupation. 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 at 8 C.F.R. § 204.5(m)(2) 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. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

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.

The record indicates that the beneficiary was not a full member of the [REDACTED] during the qualifying period, but was (for at least part of that period) living under the same conditions as Sea Org members, living communally, receiving a nominal stipend rather than a salary, and so forth. Because the beneficiary was not yet a formally committed [REDACTED] member, we cannot call this work a religious vocation, but such work *can* qualify as a religious occupation, depending upon the nature of the work. Pursuant to 8 C.F.R. § 204.5(m)(2),

¹ The "Declaration of Religious Commitment and Membership in the [REDACTED] a Scientology Religious Order" includes a "Pledge of Religious Commitment" which states, in part, [REDACTED] member considers himself/herself a volunteer to create a better world, and understands that he/she is not an employee, i.e., is not entitled to receive secular benefits such as minimum wage or overtime compensation." The assertion that a Sea Org member "is not an employee" appears to conflict with the "Contract of Employment," which refers to "employment" both in its title and in the body of its text. As noted above, the essay [REDACTED] states that members "must . . . meet any employment laws of the land," which is another reference to "employment." [REDACTED] is, therefore, inconsistent regarding whether or not Sea Org members are "employed" by that organization.

a religious occupation must involve traditional religious functions; work is not automatically a religious occupation merely because the employer is a religious institution.

The beneficiary's job title has been identified as "missionary." This title is among the qualifying job titles listed in the above regulation. It is important, however, to consider the actual duties of the position. A religious organization cannot secure benefits for an ineligible alien, in pervasively secular employment, simply by referring to the alien's position with a title such as "missionary." In short, the beneficiary's job duties, rather than her title, would determine her eligibility. To hold otherwise would permit religious organizations to sidestep immigration law simply by giving qualifying job titles to all their employees.

The director, in revoking the approval of the petition, noted that the record contains little concrete documentation, and that the petitioner has instead relied primarily on witness statements that are sometimes "contradicted by the affiants' own prior declarations." The director asserted that the inconsistencies in the record raise general questions of credibility. Upon reviewing various affidavits and schedules, the director concluded "[i]t remains unclear and unstated what the beneficiary actually does."

In an affidavit submitted with the initial filing of the petition, [REDACTED] states that the beneficiary "conducted a Missionary project concerning Church social betterment programs. Using basic principles of the Scientology religious philosophy, these implement into general society such programs that cause the improvement of education, the eradication of drug abuse, and criminal rehabilitation programs." The subsequent affidavit by [REDACTED] contains a similar description. This description is so vague that it is impossible to tell what exactly the beneficiary has been doing. The general assertion that the beneficiary has "conducted a Missionary project" does not compel the finding that the beneficiary has performed qualifying missionary work.

The director concluded that the available evidence does not rule out fund-raising as one of the beneficiary's principal activities. The director noted that church workers receive commissions on literature sales, and that the fluctuations in the beneficiary's annual compensation are consistent with commission-based payment.

[REDACTED] states, on appeal, that "there is no basis" for the director's speculation that the beneficiary is involved in fund-raising. The director's conclusion does, indeed, appear to be based on a review of general Scientology materials rather than any specific account of what the petitioner does. While the beneficiary has sporadically received various bonuses, she has also consistently received a base pay of \$50 per week, with no indication that this base pay is contingent on any fund raising activity. That being said, the fact that the beneficiary appears to be minimally involved in fund raising does not answer the question of what the beneficiary *does* do.

[REDACTED] protests the director's "concerns over the minutia of [the beneficiary's] workday." The nature of the beneficiary's duties is a legitimate subject of inquiry, as not all duties undertaken on behalf of a religious organization amount to traditional religious functions. The petitioner has submitted numerous affidavits attesting to the beneficiary's work hours and payments, but the petitioner has provided no usable information regarding the beneficiary's actual duties, despite numerous opportunities to provide that information.

We find that, while some work on behalf of the petitioner can qualify as a religious occupation, the director was justified in finding that the petitioner has not established that this particular beneficiary's work during the qualifying period amounts to a qualifying religious occupation.

We return here to the issue of the beneficiary's experience. Experience in a religious occupation is qualifying only if the beneficiary seeks to enter the United States in order to continue to pursue that same occupation. Even if the beneficiary in this case had proved experience in a qualifying religious occupation, the record reflects that she formally joined the Sea Org in 2002, evidencing her intention to work in a religious *vocation* rather than an *occupation*. As the beneficiary seeks to enter the United States as a special immigrant religious worker carrying on a religious *vocation*, then she must have been carrying on that vocation continuously during the two years immediately prior to the petition's September 2000 filing date.

For reasons explained above, the beneficiary's signed Contract from 1993 does not establish that the beneficiary became a full member of the [REDACTED] in 1993.² The petitioner, as noted, has submitted a copy of the Declaration, signed by the beneficiary on February 13, 2002.

As the Declaration is the actual instrument of [REDACTED] membership, then it is very significant that the beneficiary did not sign this document until seventeen months after the petition was filed. Although the beneficiary's full membership in the [REDACTED] constitutes a religious vocation in this case, the beneficiary was not a member when the qualifying period ended in September 2000, let alone when it began in September 1998. The record contains no evidence that the beneficiary signed another copy of the Declaration prior to the qualifying period.

We acknowledge the evidence that indicates that Sea Org workers ceremonially reaffirm their commitment every year. This ceremony, however, takes place on August 12, not on February 13. Thus, the custom of annually renewing one's commitment cannot explain the February 2002 date on the beneficiary's Declaration. [REDACTED] member Brian Asay has stated in an affidavit that he and the beneficiary "have often stood together each year when we reaffirm our vows in the [REDACTED] on August 12." The affidavit is dated October 22, 2003, at which time only two August 12 renewal ceremonies had occurred since February 2002. Mr. Asay does not specify how many times he has reaffirmed his vows alongside the beneficiary, and as noted above, the record does not contain any copies of earlier Declarations signed by the beneficiary. Affidavits can take the place of primary documentary evidence only in instances where the petitioner is able to explain credibly the absence of both primary documentation and secondary documentation. 8 C.F.R. § 103.2(b)(2)(i).

We conclude from the available evidence that the beneficiary was not a full member of the Sea Org on or before the petition's filing date. Because the beneficiary seeks to enter the United States as a worker in a religious vocation, having since joined the Sea Org in February 2002, she cannot qualify for the September 2000 priority date sought in this proceeding; the earliest qualifying filing date would be in February 2004. Because the latter date has already elapsed, the February 2002 date of the beneficiary's signature on the Declaration would not be an issue in future filings, provided that the beneficiary has continued to work exclusively in the vocation of a [REDACTED] member.

The final issue in the director's decision concerns the petitioner's ability to pay the beneficiary. 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

²The petitioner does not contend that J. Gordon Melton's essay is fraught with inaccuracies, or that the Declaration and Code are meaningless documents. If such were the petitioner's position, it is not clear why the petitioner would have troubled to submit those documents in the first place. The conclusion is inescapable that full membership in the Sea Org is only established after one has completed the steps outlined in Melton's essay.

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 has submitted an independent auditor's report and other documentation, showing that the petitioner has tens of millions of dollars in assets. The petitioner has also submitted copies of the beneficiary's payroll disbursement vouchers from January 2000 onward. The director did not specify what is supposedly deficient regarding this documentation. The available evidence compels the conclusion that the petitioner can afford to pay, and has in fact paid, the beneficiary's minimal, subsistence-level compensation since the filing date.

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.