U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

C1

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 1 5 2004

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[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, denied the employment-based immigrant visa petition, reopened the proceeding on the petitioner's motion, and again denied the petition. The director certified the decision to the Administrative Appeals Office (AAO) for review. The AAO will affirm the decision in part and withdraw the decision in part. The petition will be denied.

We note that, in addition to the aforementioned motion to reopen, the petitioner has also filed an appeal of the director's initial decision. We hereby reject the appeal, because (1) it was filed untimely, and therefore must be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(*1*), and (2) the director had already reopened the matter before the appeal was registered, and therefore the appeal was moot.

The petitioner is a regional headquarters of the Church of Scientology. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), as a purported member of the Sea Organization (Sea Org), the petitioner's religious order. The director determined that the petitioner had not established that the beneficiary's work qualifies as a religious vocation or a religious occupation, or that the beneficiary had the requisite two years of continuous work experience in the proffered position immediately preceding the filing date of the petition.

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).

Because the issue of the beneficiary's past experience is related, in this instance, to the issue of the position offered to the beneficiary, discussion of these two issues will overlap somewhat.

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 March 24, 2003. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a particular qualifying religious vocation or occupation throughout the two years immediately prior to that date.

The regulation at 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 beneficiary was born in April 1983, and thus was not quite twenty years old at the time the petition was filed on March 24, 2003. In a cover letter filed with the initial petition, Rev. Wayne Carnahan states:

> [The beneficiary] is applying for Special Immigrant Status because of his devotion to the Scientology religion and his vocation as a [redacted] [The beneficiary] . . . is being offered full time employment with the Church here in Los Angeles, California.
>
> [The beneficiary] has attached a [redacted] contract indicating that he has dedicated his life to achieving the spiritual aims of the Church of Scientology. . . .
>
> [E]ach religious worker [in the church must] take the vows of our religious order called the Sea Org. . . .
>
> The Sea Org is similar to religious orders found in other churches. . . . Sea Org members specialize in their entrusted duty of administering the most advanced spiritual levels of the Scientology religion. They are the sole custodian[s] of the most advanced religious scriptures of the Church of Scientology.

Rev. Carnahan, in the above letter, does not offer any details about the beneficiary's job title, duties, or work hours (although he repeatedly adds the title "Reverend" to the beneficiary's name). He does, however, offer more information in a sworn affidavit:

> [The beneficiary] . . . has been a staff member of the [petitioning church] since March 2000. . . .
>
> In 1993, [the beneficiary] joined the fraternity of the [redacted] and began working full time for the Church in Canada. He took on a position as the Community Relations Director responsible for creating a favorable public relations atmosphere in the neighborhoods surrounding the Church premises.

We interject, here, the observation that the beneficiary was ten years old in 1993. [redacted] does not offer any details about the duties of the Community Relations Director, the credentials required for the position, or how such a position would be consistent with the educational schedule of a ten-year-old child. [redacted] continues:

> In 1998, [the beneficiary] traveled to the United States with an R-1 Religious Visa to do a training program with the Church of Scientology International. . . . His specialized training qualified him for a position with [the petitioner] that utilizes the investigatory skills he

> learned. In March 2000, he was entrusted with a high security position requiring these investigatory techniques. . . .
>
> The aforementioned employment requires a minimum of forty hours per week.

does not provide any job title for the beneficiary, nor does he explain the nature of the "investigations" that the beneficiary first undertook in March 2000, before his 17th birthday. also mentions the beneficiary's "successful production record," with no indication as to what it is that the beneficiary produces. an provides more details about the Sea Org:

> The Sea Org is a fraternal organization existing within the formalized structure of the Churches of Scientology. It consists of highly dedicated members of the Church. These members take vows of service. Every Sea Org member signs a billion year contract which is a symbolic document and serves to signify an individual's commitment to the goals, purposes and principles of the Scientology religion. . . .
>
> The Sea Org manages the Advanced Churches of Scientology and is the custodian of the highly technical advanced scriptures. Members of the Sea Org are entrusted with the supervision of the Church and its activities. . . . Their high level of discipline and dedication sets them apart from other Scientologists and Org staff members. . . .
>
> As is true for all Sea Org Church staff members, the Church will continue to provide [the beneficiary] with all food, clothing, transportation and health care. In addition, he will receive a $50.00 per week spending allowance.

While refers to the beneficiary as a "minister," the numerous documents regarding the beneficiary's training and credentials do not include any certificate of ordination, or comparable document showing that the Church of Scientology recognizes the beneficiary as a minister. We note that the church utilizes "volunteer ministers," who significantly outnumb members and who, therefore, clearly do not need to be Sea Org members to carry out those duties.

The director instructed the petitioner to submit further evidence, including "documentary evidence that the beneficiary was working full-time as a Community Relations Director at the age of 10" and "a clear explanation of the duties of a Community Relations Director." The director also asked for further information about the beneficiary's current position.

In response, the petitioner's legal officer, states that the beneficiary "is currently studying for eight hours per day as a minister. He is in the middle of an apprentice[ship] as a religious confessional counselor and is also in the middle of his ministerial course. After he completes this course of study, he will be posted as a religious counselor and will administer confessions, mainly of staff members." refers to the beneficiary by the title ' ther than "Rev."

Regarding the beneficiary's age, states that the beneficiary "wanted to join staff from the time he was seven years old and signed a contract on April 16, 1989 in order to do that." April 16, 1989, was the day after the beneficiary's sixth birthday. Therefore, his motivation for signing the billion-year 'Contract of Employment" (Contract) cannot be that he "wanted to join staff from the time he was seven years old." states that, despite having signed the Contract, the beneficiary "was unable to join the Sea Org until he was ten due to legal restrictions."

tates that the beneficiary attended school in Toronto, but outside of school hours, he "worked assisting his mother who was the President of the Church of Scientology of Toronto. . . .[The beneficiary] would run errands for his mother regarding public relations and provided other assistance to her. This consisted of approximately two to three hours of his schedule daily. On weekends, he worked with his mother on public relations activities." It appears that the beneficiary's title of "Community Relations Director" had more to do with his mother being the local president than with any formal occupational or vocational duties. The nature of this work is not disqualifying, as it falls well outside the 2001-2003 qualifying period that is of greatest interest when considering the beneficiary's work. Nevertheless, it demonstrates that the record is not free from exaggeration on the petitioner's part.

Regarding the beneficiary's education, indicates that the beneficiary "attended a school created for Sea Org minor staff and obtained his Graduate Equivalency Diploma after taking a test in 1999, after he turned sixteen."

With regard to the beneficiary's work experience, Ms. Farny states:

> Prior to going onto full time study in the summer of this year, [the beneficiary] was in charge of keeping the sacred confidential scriptures safe from unauthorized exposure. [The beneficiary] held this position from October 2002 through to March 24, 2003. . . . [The beneficiary] would approve applicants who were attempting to be given permission to be trained and counseled using the confidential materials of the Church of Scientology. He made sure that the individuals who were granted access to the materials were at the proper level of their spiritual awareness. . . .
>
> Prior to October 2002, [the beneficiary] was a religious counselor who heard confessions from staff particularly, and from occasional parishioners. The green card petition mentions "investigatory skills"; this was in error.

The fact that church officials were "in error" when describing the beneficiary's duties underscores our strong preference for contemporaneous, documentary evidence, rather than potentially inaccurate after-the-fact descriptions offered sometimes years after the events described (such as Ms. Farny's own erroneous assertion that the beneficiary signed his Contract at the age of six, because he had wanted to serve the church ever since he was seven years old).

The director denied the petition on September 10, 2003, stating that the petitioner has not established that the position offered to the beneficiary qualifies as either a religious vocation or a religious occupation, or that the beneficiary worked in the same position during the qualifying period. The petitioner filed a motion to reopen, and counsel stated that the earlier request for information did not contain any indication that the director did not consider membership in the Sea Org to be a vocation. Review of that notice shows that the director acted under the presumption that the petitioner sought to present the beneficiary's position as a religious occupation rather than a vocation. Counsel's motion is devoted largely to the argument that the Sea Org is a religious order, the members of which carry on a vocation. Counsel asserts that the director's denial rests on impermissible factors that lie outside the regulations.

The petitioner's motion includes an affidavit from n author, consultant, and adjunct professor of Religious Studies at Washington University. n states that, based on his extensive study of the Church of Scientology, Scientology qualifies as a religion and the Sea Org qualifies as a religious order. The director never questioned Scientology's status as a religion, so the purpose of this part of Dr.

Flinn's affidavit is unclear. Similarly, Dr. Flinn's discussion of specific tenets and doctrines of Scientology are not relevant to this discussion. The present proceeding is not a forum for debating the merits of Scientology, or comparing it to other religions or philosophies. Rather, the issue at hand is whether an individual alien meets the secular legal criteria for immigration benefits.

tates "the Sea Org functions . . . in all essential aspects the same way as religious orders within the Roman Catholic Church or communities of monks within Buddhism." cites "[m]embers' vows of service [and] their abstemious lifestyle," and stresses the "highest levels of knowledge, skill and religious commitment" encountered among members of the Sea Org. n never mentions the beneficiary specifically. The assertion that membership in the Sea Org is inherently indicative of the "highest levels of knowledge, skill and religious commitment" does not readily appear to be compatible with the documented fact that the beneficiary signed the Contract with the Sea Org at the age of six years, an age at which children are generally not considered competent to enter into legal agreements, let alone permanent vows.

On October 23, 2003, the director reopened the petition on the petitioner's motion, and again denied the petition, certifying the decision to the AAO. The director's second decision repeats much of the language from the first decision, omitting sections that counsel had deemed unacceptable.

The director, in denying the petition, has cited *Matter of Church Scientology International*, 19 I&N Dec. 593, (Comm. 1988), in support of the proposition that "significant dissimilarities exist [between] the Sea Org and traditional religious orders." The cited case is of very limited value here, because it involved not a special immigrant religious worker, but rather an L-1 intracompany transferee. The precedent decision discusses similarities and differences between the Church of Scientology and the Roman Catholic Church, but largely in a business context involving the extent to which the mother church has legal control over local churches. *Matter of Church Scientology* does not mention the Sea Org, let alone compare it to other religious orders. Accordingly, the director's citation of *Matter of Church Scientology* appears to be off-point.

The director stated "the petitioner has submitted no documentary evidence to support" the claim that the beneficiary's Contract with the Sea Org is comparable to the perpetual vows taken by members of other religious orders. The director further asserted that an alien is not necessarily presumed to be carrying on a religious vocation simply because that alien has taken vows. The director observed that members of religious orders "must complete prescribed courses of theological training," whereas the beneficiary joined the Sea Org as a child. The director, in the decision rendered on motion, reaffirmed the finding that the petitioner has not established that membership in the Sea Org is a qualifying religious vocation. The director also noted that the beneficiary signed the Sea Org Contract at age six, but, according to the petitioner, did not "join" until he was ten, demonstrating that the beneficiary's signature on the Contract is not synonymous with commencement of activities on the organization's behalf.

The director, in arriving at the above finding, stated that the petitioner has not established that members of the Sea Org live an "abstemious lifestyle." This finding fails to take into account payroll records, showing that the beneficiary receives only a nominal stipend for his efforts. Indeed, elsewhere in the decision, the director observed that the beneficiary's compensation falls well below the poverty line. The petitioner has indicated that the Sea Org provides room, board, and expenses, along with that stipend. To this extent, the Sea Org appears to be superficially comparable to religious orders run by more "mainstream" religions; but to qualify, the comparison must be more than superficial.

While the petitioner has submitted numerous background documents about Scientology, none of these documents set forth the minimum requirements that one must meet in order to join the Sea Org. Without such

documents, a generally-worded affidavit attesting to the "highest level of knowledge" of Sea Org members carries little weight. There remains the point that the petitioner allowed a six-year-old child to sign a billion-year Contract with the Sea Org, which necessarily raises the question of who the church would *not* permit to sign such a Contract.

On motion, counsel states:

> The Director challenges that the beneficiary's status as an "early member" somehow invalidates the Sea Org as a religious order. . . . This rationale fails as a proper legal basis for denial because it is clearly outside the permissible chronological purview of statutory classification in INA § 101(a)(27)(C) – carrying on the religious vocation for the two years immediately preceding the application for admission.

As the director plainly stated in the denial notice, the question of whether membership in the Sea Org is a vocation is entirely separate from the question of whether the beneficiary was a member of the Sea Org for at least two years. The petitioner has submitted documentation showing that it allows children of kindergarten age to sign a billion-year Contract with the Sea Org; we are not obliged to ignore this information merely because the beneficiary signed his Contract more than two years before the filing date. Whether the beneficiary had been a member for a week or for fifty years, the circumstances under which he first signed the Contract are relevant when considering the nature of the organization. The two-year requirement does not, in any way, restrict reasonable inquiry into the underlying nature of the organization.

Counsel maintains that the beneficiary's joining the Sea Org at such a young age "is excellent evidence of the calling to religious life contemplated by 8 C.F.R. § 204.5(m)(2)." This argument would be persuasive only if six-year-old children routinely made reliable predictions about their ultimate careers. There is no evidence that very young children (who are especially impressionable, particularly when a parent is a church official) sign the Sea Org Contract under different circumstances than adults, who have given mature reflection to the nature of a permanent commitment.

Because the petitioner has attempted to represent that signing the billion-year Contract with the Sea Org is comparable to becoming 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.

Similar steps are listed at http://www.request.org.uk/main/dowhat/community/monks/monk02.htm, and at [redacted]s website, at http://www[redacted]
The latter site 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."

In a similar vein, according to http://welcome-to.chiangmai-chiangrai.com/monkhood.htm, "[i]n order to become a [Buddhist] monk, a man must be 20 years old, he must be able to read and write, and he must study the rules and precepts for novices. He is given an examination, and if he passes, he is given a certificate of entry to the monkhood." Review of other sites is consistent with this information.

The more one reads about such religious orders, the more it becomes apparent that *maturity* is a critical factor. 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 six-year-old child is not considered to have sufficient maturity or responsibility to drive an automobile, drink alcohol, vote, or sign a contract. The record offers no evidence that, at the time the Sea Org accepted the beneficiary's signature on the billion-year Contract, that the organization had made any concerted effort to ascertain the depth of the beneficiary's calling, or that the beneficiary's signature on the Contract 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 (such as the Contract which the petitioner calls "symbolic") 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).

Furthermore, other materials provided to Citizenship and Immigration Services (CIS) by the Church of Scientology (either church materials, or outside materials that the church has brought to CIS' attention) demonstrate that one's signature on the Sea Org Contract does not automatically establish full membership in the Sea Org. The Church of Scientology has submitted, for our consideration, portions of an essay entitled "A Contemporary Ordered Religious Community: The Sea Organization," [redacted]. The essay, available online at http://www.cesnur.org/2001/london2001/melton.htm and published as a chapter in *New Religious Movements and Religious Liberty in America* [redacted] eds., 2nd ed., 2003), is not an official church document, but because the Church of Scientology has chosen to make CIS aware of this document, without any disclaimer, the church has effectively endorsed the statements therein. Mr. Melton states:

> The process of joining the Sea Org has become somewhat institutionalized. In most instances, it begins with a public meeting in a Scientology church facility in which a Sea Org 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 Sea Org 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 Sea Org's 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 Sea Org. 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 excerpt indicates that the billion-year Contract is largely symbolic, and that signing it does not make the signer a member of the Sea Org. Rather, the essay states that one is not a Sea Org member until after one has completed the EPF program and ceremonially read the "Code of a Sea Org Member." This statement is corroborated by the existence of another document, 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 legal clauses that spell out the nature of the member's obligations to the church.[1] The Declaration submitted to CIS bears the insignia of the Church of Scientology Flag Service Organization, but the Declaration contains no other reference to this subdivision except in its preamble. The body of the Declaration appears, from its wording, to apply to all members of the Sea Org.

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 Sea Org, 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 of a Sea Org Member," and execution of the Declaration) can qualify as a religious vocation. If an individual has signed the Contract, but has not undergone the remainder of the process described above, then that individual has not been shown to be truly in a religious vocation. As the beneficiary in this case has not been shown to have completed any steps beyond signing the billion-year Contract, the petitioner has not established that the beneficiary is in a religious vocation. Such an individual might, however, qualify as a worker in a religious occupation, depending on the nature of the duties that individual has undertaken. We turn, now, to the issue of whether this particular beneficiary qualifies as a worker in a religious occupation.

Although the petitioner did not expressly claim that the beneficiary's work constitutes a religious occupation, the director addressed that issue in an effort to be thorough. The director concluded that, owing to the low rate of compensation, the position cannot qualify as an occupation. Counsel, in response to the certified

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[1] The "Declaration of Religious Commitment and Membership in the Sea Organization, a Scientology Religious Order" includes a "Pledge of Religious Commitment" which states, in part, "each Sea Organization 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 "The Sea Organization" states that members "must . . . meet any employment laws of the land," which is another reference to "employment."

denial, rightly protests that the director has effectively shut off all means for (purported) Sea Org members to qualify as special immigrant workers, by finding that their work is neither a vocation nor an occupation.

The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

> *Minister* means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.
>
> *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.

To establish eligibility for special immigrant classification as a worker in 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.

CIS 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.

Regarding the beneficiary's compensation, while it is true that the beneficiary has received little monetary remuneration from the petitioner, a religious worker who works for compensation can be regarded as "employed" even if that compensation is not monetary. In a 1982 precedent decision, the Board of Immigration Appeals ruled that the work of an alien missionary amounted to "employment," rather than "volunteer" work, because the church provided the alien with room, board, a small stipend, and other material support in lieu of a salary. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982). Thus, the beneficiary's low monetary compensation is not inherently incompatible with the concept of employment in an occupation.

To determine whether the beneficiary works in a religious occupation, we must consider the nature of his duties, and determine whether those duties conform to a traditional religious function of the church. Pervasively secular work such as cleaning, maintenance, construction, and so on, do not constitute traditional religious functions, whereas, for example, auditing (not in the financial/accounting sense, but rather a form of counseling offered within the Church of Scientology) and related functions are integral to the practice of Scientology and can be said to be traditional religious functions in the context of that faith.

As noted above, the record offers little information about the beneficiary's intended future duties, except that the beneficiary "will be posted as a religious counselor and will administer confessions, mainly of staff members." The regulatory definition of "religious occupation" specifically lists "religious counselors" among qualifying examples. Further details, however, would be necessary to warrant rendering a definitive determination that the position described qualifies as a religious occupation.

We note that the petitioner has, at times, indicated that the beneficiary seeks to work as a minister, which is, by law, a category separate from other religious vocations, as well as from religious occupations. But because the petitioner was clearly not employed as a minister during the two years immediately prior to the petition's filing date, the beneficiary plainly cannot qualify under the provision pertaining to ministers. Furthermore, the few duties described do not appear to conform readily to the regulatory definition of a minister. The regulations, as noted, state that a "religious counselor" holds a religious occupation, which is separate from the vocation of a minister, and therefore if the beneficiary were to qualify under any classification, it would have to be that of a religious occupation. Background documents submitted by the petitioner refer to "volunteer ministers," but offer no information about employed (non-volunteer) ministers. The volunteer ministers with the petitioning church appear to be lay volunteers, who qualify as volunteer ministers following a brief training period. A publication in the record, *Serving the Community and Its Needs*, represents volunteer ministry as a means for lay church members to serve their communities, rather than as a career; the publication includes a tear-out card to send away for more information. There is no evidence that these individuals support themselves as volunteer ministers, or that they are expected or encouraged to give up their secular careers outside of the church.

While the beneficiary's future position could (with more information) qualify as a religious occupation, there remains the issue of the two-year experience requirement. The director found that the petitioner has not established that "the beneficiary was employed in the same position for the two years immediately preceding filing of the petition." Beyond this finding, we note that the descriptions offered by the petitioner indicate that the beneficiary's duties changed significantly during the two-year qualifying period. The beneficiary served as a counselor for part, but not all, of that qualifying period, and the beneficiary's training is still ongoing. The pursuit of religious training is not a religious occupation or vocation, but rather preparation for future work in a religious occupation or vocation. The Board of Immigration Appeals has held that religious work is not "continuous" if it is interrupted by ongoing religious studies. *See Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

Counsel asserts that the regulations do not state that a change in duties during the two-year period is disqualifying. In this instance, the beneficiary's responsibilities did not merely evolve or change slightly; there were changes in his basic functions and job title. When the qualifying period began in March 2001, the beneficiary, then seventeen years old, was a counselor, essentially acting as confessor; that October, he became a guardian of secret church documents. The beneficiary is said to intend to become a minister and/or a religious counselor. Given his repeated changes in fundamental duties, the petitioner cannot satisfy the two-year experience requirement.

The regulations at 8 C.F.R. § 204.5(m)(1) and (3)(ii)(A) require that the beneficiary must have carried on *the* vocation or occupation, rather than *a* vocation or occupation, indicating that the work performed during the qualifying period should be substantially similar to the intended future religious work. The underlying statute, at section 101(a)(27)(C)(iii), requires that the alien "has been carrying on such . . . work" throughout the qualifying period. An alien who seeks to work in occupation A has not been carrying on "such work" if employed in occupation B for the past two years. It cannot suffice for the petitioner simply to assert that the beneficiary has been, and will continue to be, a member of the Sea Org; other materials, submitted to CIS by

the Church of Scientology, demonstrate that actually joining the Sea Org involves considerably more than simply signing the "symbolic" Contract.

Pursuant to the above discussion, we arrive at the following conclusions: (1) full membership in the Sea Org constitutes a religious vocation; (2) a signed billion-year Contract of Employment is not, by itself, sufficient evidence to establish full membership in the Sea Org; (3) individual workers who are not full members of the Sea Org may or may not work in religious occupations, depending on the nature of their duties; (3) the beneficiary's intended future duties could be consistent with a religious occupation, but the petitioner has provided insufficient information about such duties; and (4) due to his ongoing studies and the changing nature of the beneficiary's work during the 2001-2003 qualifying period, the beneficiary does not have the required continuous experience in a religious occupation during that qualifying period.

The AAO received counsel's response to the certified decision on December 1, 2003. Several months later on July 21, 2004, the AAO received a "Motion to Remand" submitted by counsel. This submission deals with perceived flaws in the training materials used by adjudicators at the California Service Center. The regulations contain no provision for any "motion to remand," and as a supplement to the record, the submission is untimely by more than half a year. The regulations do not provide an open-ended period in which the petitioner or counsel may supplement the record. The subject matter of the "motion to remand" does not directly address the director's decision, instead focusing on the general principle that, because the training materials were flawed, the adjudicators at the California Service Center were incapable of delivering a valid decision. The use of these training materials does not lead inevitably to the conclusion that the director's decision was flawed. We have reviewed the director's decision at length, and while portions thereof do not withstand scrutiny, what remains warrants the denial of the petition.

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 petition cannot be approved.

ORDER: The director's decision is affirmed in part and withdrawn in part. The petition is denied.