



U.S. Citizenship  
and Immigration  
Services

01



FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: SEP 09 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:



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.

*Mari Pluss*  
Robert P. Wiemann, Director  
Administrative Appeals Office

identifying data deleted to  
prevent clearly unwarranted  
invasion of privacy

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**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and certified to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed and the denial of the petition will stand.

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 an inspector of auditing. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as an inspector of auditing 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.

In response to the certified denial, counsel mentions several petitions filed by the petitioner on behalf of various beneficiaries. Counsel submits a "motion to consolidate," and requests a single, collective adjudication of all the appeals, because they are said to hinge upon the same basic issues. There is no regulatory provision for the petitioner to file a "motion to consolidate," or for the AAO to issue a single decision covering several different beneficiaries. The AAO must consider each appeal on its own merits, although decisions that cover similar issues may well contain similar, or at times identical, language.

We note that, in the "motion to consolidate," counsel states "[e]ach of these cases present identical issues," although the beneficiaries have different job titles and perform different duties for the church. Also, the grounds for denial are not identical in each proceeding. Any collective decision may, rightly or wrongly, be considered as applying to every alien worker for the Church of Scientology. The AAO has no inclination to issue a blanket declaration regarding the eligibility or ineligibility of *all* Scientology workers, and holds, instead, that some workers within that church may qualify for benefits, whereas others clearly do not.

Counsel requests that, in the event that the "motion to consolidate" is denied, the AAO should consider, in each separate decision, the brief submitted earlier in response to another denial. As noted above, the denial decisions are not identical, and neither are the records of proceeding, and therefore we reject the assertion that a single brief, originally prepared for a different alien, suffices to address the several different denial notices. We shall consider all evidence submitted in regard to this particular petition, but we need not consider arguments relating to the original petition and record for which the brief was initially prepared.

Counsel also requests oral argument. The regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, Citizenship and Immigration Services (CIS) has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. See 8 C.F.R. § 103.3(b). In this instance, counsel identified no unique factors or issues of law to be resolved that are not already covered by written materials in the record. Consequently, the 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, 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 first issue concerns whether the beneficiary has the required experience. 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 9, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an inspector of auditing throughout the two years immediately prior to that date.

Rev. [REDACTED] vice president of the petitioning entity, describes the beneficiary's past work, and intended future duties, in an affidavit:

In March 1998, she became a full time religious worker at [the Church of Scientology Celebrity Center International in Los Angeles], and started to work as an "auditor" ministering the Church of Scientology's main sacrament of "auditing." She was ordained a minister in our religion in June 2001.

Auditing consists of ascending levels of religious services that address the spirit. In the practice of auditing, a trained, ordained minister, or a minister-in-training called an "auditor," helps guide the person to address traumatic areas of his past, including past lives, and free him from their harmful effects. . . .

[The beneficiary] worked as an auditor until September 2001, first for the Church of Scientology Celebrity Center International and later starting in May 2000 working for the Church of Scientology International until September 2001. . . .

Because of her skills as an auditor, [the beneficiary] started working as an inspector of auditing for the Church of Scientology International at our [petitioning] Church. . . . She has been using her skills as an auditor to inspect those religious programs concerning the ministry of auditing to parishioners of our Church, and confirming the completion of these programs, or the correction of other Church of Scientology Ministers working on these programs. . . .

[The beneficiary's] skills as an auditor enable her to accurately inspect these programs and confirm their completion, or alter or correct those working on the programs so that they are done.

The record contains copies of several training certificates, indicating that the beneficiary qualified as an "FPRD Auditor" on June 22, 2000, and as a "Hubbard New Era Dianetics Auditor" on February 10, 2001.

The director requested additional details regarding the beneficiary's past work. The director noted that the beneficiary's FPRD Auditor certificate is the only certificate that the beneficiary had earned before the beginning of the two-year qualifying period, and therefore the beneficiary's duties appear to have evolved significantly during the qualifying period (unless, as seems unlikely, the training is irrelevant to the beneficiary's duties).

In her second affidavit, Rev. Story lists overlapping duties undertaken by the beneficiary during the qualifying period:

January 1999 – December 1999	Training in auditing skills
April 1999 – May 2000	Auditor at Celebrity Center International
May 2000	Completed training to become ordained minister
May 2000 – September 2001	Auditor at Church of Scientology International
June 2000	Began working as inspector of auditing
June 2001	Ordained as a minister

The director, in denying the petition, noted the repeated changes of the beneficiary's duties during the qualifying period. The director found that "the positions of auditing and then inspector of auditing . . . represent clearly different levels of job duties, functions, devices and skills." Because the beneficiary became an inspector of auditing less than two years prior to the petition's September 2002 filing date, the beneficiary did not possess two years of experience in that position at the time of filing. Similarly, the beneficiary was ordained as a minister less than two years before the filing date, and therefore, if it is the petitioner's contention that the beneficiary will work as a minister, the beneficiary's experience is once again insufficient.

The fact that the beneficiary worked for the petitioner in some capacity during the two-year period is not sufficient. 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 position A has not been carrying on "such work" if employed in position B for all, or some, of the two-year qualifying period.

The director found that the information regarding the beneficiary's remuneration is ambiguous, and that the petitioner has not established the value of the room, board, and amenities provided to the beneficiary. It remains that the beneficiary received compensation, both monetary and in other forms, and there is little reason to dispute that the beneficiary worked, in some capacity, for the petitioner during the relevant period. The finding that the beneficiary's experience is not qualifying rests on the *nature* of the work, rather than on the question of whether the work took place at all.

The finding that the beneficiary's duties changed substantially during the qualifying period is not a general finding about the nature of the Church of Scientology. Rather, it is a specific finding, particular to the facts of

this one case. Therefore, general documentation about the church cannot overcome this finding. Nevertheless, the petitioner's most recent submission on certification consists primarily of such general documentation. The materials that pertain specifically to the beneficiary regard her compensation, but these materials do not address or resolve the issue of experience.

The next issue is whether the position offered to the beneficiary qualifies under the statute and regulations. 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.

*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.

While the determination of an individual's status or duties within a religious organization is not under the purview of 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 nature of the beneficiary's position is not entirely clear. At various times, the petitioner seems to represent the beneficiary's position as that of a minister, a religious occupation, and a religious vocation, although the three classifications are, for immigration purposes, mutually exclusive rather than overlapping. We consider, first, the claim that the beneficiary is a minister. This bears some consideration, given that the petitioner consistently refers to the beneficiary with the title "Reverend" or "Rev.," and calls her an "ordained minister." The regulation, however, focuses on the nature of the alien's duties, rather than merely on the job title. Otherwise, a church could make all of its employees eligible for immigration benefits, simply by applying the title "minister" to their respective positions. The Board of Immigration Appeals, in *Matter of Rhee*, noted that "accommodating religious organizations" could easily circumvent the intent of the law unless the nature of the duties is a central consideration. *Id.* at 610. The director, in denying the petition, cited *Rhee* to indicate that an alien who holds a certificate of ordination is not necessarily a "minister" for immigration purposes, if that person's duties do not conform to the usual duties of members of the clergy.

The director noted the absence of documentary evidence to show that the beneficiary is authorized to perform the duties of clergy within the church. The director stated "[i]t is unclear, given the contradictory evidence, that the beneficiary's activities are distinctly or classifiably different from that of a field auditor." Rev. Stilo,

in the response to the request for evidence, had earlier indicated that “[f]ield auditors are not employees of our Church (nor any Church of Scientology for that matter),” the implication being that the beneficiary is not, and has not been, a field auditor. The exact distinction between “field auditors” and “auditors” is not fully clarified, but the evidence appears to indicate that field auditors generally work with non-members of the church, whereas auditors are higher-ranking individuals who perform audits on church members.

An affidavit from [REDACTED] the petitioner’s senior personnel officer, refers to “a trained, ordained minister or minister-in-training called an ‘auditor.’” Mrs. Wright asserts that “[m]inisters of the Scientology religion . . . must be able to perform all ceremonies normally required of a minister of religion i.e., marriages, christenings, funerals, confessionals, etc.” The affidavit pertains to ministers in general, and does not mention the beneficiary specifically. “Chaplain and Ministerial Services,” a chapter of an unidentified church publication, discusses ministerial services such as Sunday worship services. This document does not mention auditing or equate auditors with ministers. Rather, ministers who conduct services such as weddings are consistently called “Chaplains,” a title never applied to the beneficiary. Other documentation refers to “volunteer ministers,” who do not appear to be church employees at all, and whose work (including counseling and disaster relief) appears to have much more to do with being a “volunteer” than a “minister.” Volunteer ministers do not appear to be members of the clergy, and in any case there has been no claim that the beneficiary is a volunteer minister.

Within the church, it appears that the term “minister” is applied to a wide range of duties. The petitioner has not demonstrated that the beneficiary’s intended future duties are those of a “chaplain,” the type of minister whose described role most closely conforms to the regulatory definition of a minister.

Next, we consider whether the beneficiary works in a religious vocation. In support of this claim, Rev. Story states:

[The beneficiary] is a member of the Sea Organization. The Sea Organization is a fraternal organization existing within the formalized structure of the Churches of Scientology. Members of this religious order take vows of eternal service to the Scientology religion. They each sign a billion year contract, which is a document that formalizes and signifies the Sea Organization member’s individual commitment to the goals, purposes and principles of the Scientology religion. . . .

Members of the Sea Organization 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 Non-Sea Organization members. . . .

As is true for all members of the Sea Organization, the church will provide him [sic] with all food, clothing, transportation and health care. In addition, she will receive a \$50.00 per week spending allowance.

The record contains a copy of the beneficiary’s “Contract of Employment” (Contract) with the Sea Organization (Sea Org), signed and dated August 6, 1997. 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 on 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 SEA ORGANIZATION FOR THE NEXT BILLION YEARS.

(As per Flag Order 232)

The petitioner contends that the beneficiary's signature on this contract establishes that she is a member of the Sea Org, and thus has taken the vows characteristic of a religious vocation.

In denying the petition, the director stated: "[t]he petitioner does not provide evidence to unequivocally and unambiguously prove that the religious profession of 'auditor' is a religious vocation." The director found that the "unspecific pledge of employment" does not amount to a vow or comparable permanent commitment. The director also concluded that the petitioner had provided insufficient documentation regarding the Sea Org. The director stated "the petitioner proves the beneficiary needs . . . little or no knowledge of the Sea Org . . . before signing the Sea Organization Contract of Employment, or even being ordained." The director further stated "the Sea Organization . . . makes no provision for the life-long support of its members; no formal legal organizing instrument, or governing structure." The director also asserted "the fact that a religion has a special core of devoted volunteer workers organized as an 'order' does not establish that members of that order are engaged in a religious vocation for the purpose of special immigrant classification."

Subsequent to the certified decision, the petitioner submits affidavits comparing the Sea Org to Roman Catholic religious orders, and describing the provisions that the Sea Org makes for its elderly members, such as the rental of space at local assisted living centers, as well as sections of church housing specially modified for the needs of the elderly. This affidavit answers the director's assertion that the petitioner has not shown "provision for the life-long support of its members," although we note that affidavits carry less weight than first-hand documentary evidence, pursuant to 8 C.F.R. § 103.2(b)(2)(i). The record, as a whole, indicates that Sea Org members reside more or less permanently in communal church housing, with the church providing for the members' basic needs.

The petitioner has placed considerable emphasis on the billion-year Contract with the Sea Org. Other evidence, however, indicates that joining the Sea Org entails more than signing the one-paragraph Contract. We note, here, an essay entitled "A Contemporary Ordered Religious Community: The Sea Organization," by J. Gordon Melton. The essay is available online at <http://www.cesnur.org/2001/london2001/melton.htm> and as a chapter in *New Religious Movements and Religious Liberty in America* (Derek H. Davis and Barry Hankins, eds., 2<sup>nd</sup> ed., 2003). Originally, it was the Church of Scientology itself that brought this essay to our attention. This background information, readily available to the general public via the above sources, is relevant to this matter and therefore bears consideration. 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 essay 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" (Code). This statement is corroborated by the petitioner's submission 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 clauses that spell out the nature of the member's obligations to the church.<sup>1</sup> There would appear to be no reason for this Declaration (with its detailed, legalistic wording) to exist, if one could become a Sea Org member without signing it and thus agreeing to its terms.

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, 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.

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<sup>1</sup> 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." The Church of Scientology is, therefore, inconsistent regarding whether or not Sea Org members are "employed" by that organization.

The copy of the Declaration in the record is not signed. There is no evidence that the beneficiary has executed the declaration, recited the code, or otherwise taken the necessary steps to complete her initiation into the Sea Org. Thus, while *full* Sea Org membership can constitute a religious vocation, there is no evidence that this particular beneficiary is, in fact, a full member. We therefore agree with the director's finding that the beneficiary is not engaged in a religious vocation.

Having found that the beneficiary is not engaged in 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.

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.

The record does not indicate that the beneficiary was a full member of the Sea Org during the qualifying period, but she was 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 Sea Org 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), a religious occupation must involve a traditional religious function; work is not automatically a religious occupation merely because the employer is a religious institution. In this instance, the beneficiary's work involves a practice known as "auditing." According to church materials in the record, "[a]uditing is made possible by the use of a specially designed meter, called an Electro-psychometer or E-Meter, a religious artifact which enables the auditor and the individual receiving the auditing to locate areas of the past which can then be addressed in auditing. It is not a lie detector and, by itself, it does nothing. It is only used by a trained minister and is essential to auditing; that is its only application." Rev. Story asserts that the E-meter is used to detect the "minute amount of electrical energy" that, according to church doctrine, "varies or dissipates" when the person being audited "has successfully addressed – and resolved" "mental image pictures that harbor" "experiences which lie at the root of spiritual travail."

The director, in denying the petition, stated: "[t]he petitioner does not specify how the beneficiary uses any form of 'religious philosophy, government, creed or formal code of doctrine.'" The director asserted that the task of auditing consists of "the secular and administrative duties of asking a set of questions . . . and monitoring an electrical measuring device, not specifically religious in application or scope." While the director has accurately described the mechanical processes involved in auditing, we disagree that the duties of an auditor are, therefore, secular in nature. The duties of, for instance, a Catholic priest could be reduced to secular elements, such as public speaking, reading, serving wine, and so on; but in their context, these activities are indisputably religious in nature. In the case of auditing, the technique is unique to Scientology, and the particular "electrical measuring device," the E-meter, is something that is not used for any secular

purpose, by anyone outside of the Church of Scientology. While the auditing process may, superficially, resemble the administration of a polygraph test, the motivation is religious, and the principles by which auditing is said to be effective (for example, the tenet that mental images, caused by past lives, can create detectable electrical impulses) are grounded in church dogma rather than in objective science.

The director noted that, according to church materials, “[p]arishioners of Scientology contribute financially to the support and expansion of the religion as part of their participation in auditing and training.” The director concluded that, because the beneficiary has functioned as an auditor, the beneficiary has therefore been involved in fundraising. This finding is questionable, and it seems to be comparable to the assertion that a Christian minister engages in fundraising by passing a collection plate during worship services. While a church bake sale or bingo night would certainly be a secular fundraising activity, and the sale of literature can constitute fundraising as well depending on the context, auditing (as discussed above) appears to be an irreducibly religious activity within the Church of Scientology, rather than a widely-administered scientific test that, in this case, happens to be administered by Scientologists.

Although Rev. Glen E. Stilo, the petitioner’s director of Internal Affairs, has asserted that the beneficiary “does not collect nor solicit donations,” we agree with the director that fluctuations in payments to the beneficiary are consistent with commissions or bonuses, and show that the beneficiary has not solely relied on a fixed allowance. 8 C.F.R. § 204.5(m)(2) states that the group of workers covered by the definition of “religious occupation” “does not include . . . fund raisers, or persons solely involved in the solicitation of donations.” In this instance, the beneficiary is not *solely* involved in the solicitation of donations, and, while funds have been raised through her work, this appears to be incidental rather than central to the purpose of that work. While a charge may be assessed for an auditing session, it is equally true that many Jewish synagogues sell tickets for admission during the High Holidays. Few would argue that Jewish religious observances of Yom Kippur and other holidays amount to fundraising activities. Similarly, many Christian churches require (or strongly encourage) tithing from church members. No church with paid employees could long continue without a source of income, and it appears to be overly broad to conclude that *every* church worker involved in an income-generating activity is a “fund raiser,” and thus is disqualified from classification as a worker in a religious occupation.

Because auditing is a traditional religious function within the context of Scientology (indeed, it is practiced nowhere else but in that religion), an individual whose primary function pertains to auditing can be said to work in a qualifying religious occupation. At the same time, we return to the requirement that an alien’s intended *future* work must correspond to the alien’s *past* work during the two-year qualifying period. Therefore, if the beneficiary seeks, eventually, to work in a religious vocation by completing the process of joining the Sea Org, then she must accumulate two years of experience as a full Sea Org member before she would become eligible for special immigrant religious worker classification as a worker in a religious vocation. Time spent in a religious *occupation* is non-qualifying for aliens who seek to enter as workers in a religious *vocation*.

The final issue concerns the petitioner’s ability to pay the beneficiary’s compensation. The regulation at 8 C.F.R. § 204.5(g)(2) requires that “[a]ny 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 director, in denying the petition, cited apparent discrepancies in employee lists and other documentation, and concluded that the petitioner has not established its ability to pay the beneficiary.

A memorandum from an official of CIS states: "CIS adjudicators should make a positive ability to pay determination . . . [when t]he record contains credible verifiable evidence that the petitioner . . . has paid or currently is paying the proffered wage." Memorandum from William R. Yates, Associate Director of Operations, *Determination of Ability to Pay under 8 CFR 204.5(g)(2)* (May 4, 2004). In this instance, most of the beneficiary's compensation is non-monetary, such as room and board. There appears to be no dispute that the petitioner is in fact providing the beneficiary's housing, food, medical care, and the petitioner has submitted Form W-2 Wage and Tax Statements showing that the beneficiary has consistently received funds exceeding the minimum \$50 weekly allowance. While there are some gaps and irregularities in the evidence, these do not appear to be of such consequence that they raise any serious doubt regarding the ability of the petitioner (which has over a thousand employees) to support the beneficiary at what is, essentially, subsistence level. We therefore withdraw the director's finding that the petitioner has not established its ability to pay the beneficiary's wages (or rather, allowance).

While an individual performing the beneficiary's duties could conceivably qualify as a special immigrant religious worker in a religious occupation, and the petitioner appears to be able to pay the beneficiary's compensation, variations in the beneficiary's past work and uncertainty about her future endeavors preclude a finding of eligibility in this proceeding. This finding is without prejudice to any future petition, filed with proper documentation and the appropriate fee, at a time when the beneficiary has accumulated two continuous years of experience in the same capacity in which she seeks future employment.

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 denial will be affirmed.

**ORDER:** The director's decision is affirmed. The petition is denied.