

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529



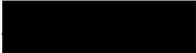
U.S. Citizenship
and Immigration
Services

PUBLIC COPY

01



FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

APR 12 2005

WAC 00 274 51337

IN RE:

Petitioner:



Beneficiary:

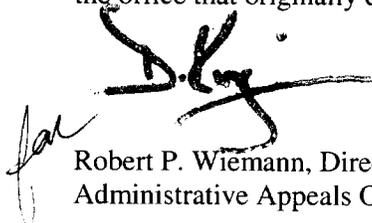
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



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

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 June 7, 2004. The petitioner filed an appeal to this decision, and the petitioner's timely appeal is now before the Administrative Appeals Office (AAO) for review. The AAO will dismiss the appeal.

Section 205 of the Immigration and Nationality Act (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 Dec. 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* at 590. 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, be mere approval of the petition, entitled to an immigrant visa. *Matter of Ho* at 590.

The petitioner seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Act, 8 U.S.C. § 1153(b)(4), to employ the beneficiary as a "Religious Instructor" and "Dormitory Superintendent." The director first determined that as the beneficiary entered the United States as a vocational student, the petitioner could not establish the beneficiary came to the United States solely for the purpose of "carrying on the vocation or working for the church as a [t]eacher." The director further determined that the petitioner provided no evidence of remuneration and that the beneficiary worked for the petitioner on a part-time basis; therefore, the petitioner could not establish the beneficiary continuously worked for the petitioner for the requisite two-year period prior to filing the petition. The director also found that the petitioner failed to establish the beneficiary "has the qualifications for the position at the professional capacity." Finally, the director determined the petitioner failed to establish its ability to pay the beneficiary the proffered wage.

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) echoes the above statutory language, and states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States.” The regulation 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)(4) states that each petition for a religious worker must be accompanied by a job offer from an authorized official of the religious organization at which the alien will be employed in the United States. The official must describe the terms of payment for services or other remuneration.

The first issue raised in the director’s decision concerns the beneficiary’s entry into the United States. Section 101(a)(27)(C)(ii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii), requires that the alien seeking classification “seeks to enter the United States” for the purpose of pursuing a religious vocation or religious occupation. In this instance, the beneficiary entered the United States as an M-1 nonimmigrant vocational student. Thus, the director concluded, the beneficiary did not enter the United States solely for the purpose of working in a religious occupation or vocation.

This finding is not defensible. The AAO interprets the language of the statute, when it refers to “entry” into the United States, to refer to the alien’s intended *future* entry *as an immigrant*, either by crossing the border with an immigrant visa, or by adjusting status within the United States. This is consistent with the phrase “*seeks to enter*,” which describes the entry as a future act. We, therefore, withdraw the director’s finding in this regard.

The next issue to be examined is whether the petitioner has demonstrated that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for at least the two years preceding the

filing of the petition. Connected with this issue is the question of whether the beneficiary's work for the petitioner constitutes qualifying employment in a religious occupation or vocation.

8 C.F.R. § 204.5(m)(1) states, in pertinent part, that "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." The petition was filed on September 25, 2000. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation from at least September 25, 1998.

The Form I-94, Arrival and Departure Record, indicates that the beneficiary initially entered the United States on November 19, 1995 as an M-1 nonimmigrant. The beneficiary received a subsequent extension of his M-1 nonimmigrant status with authorization to remain in the United States until August 29, 1996. On September 13, 1999, the beneficiary received approval to change his nonimmigrant status to that of an R-1 nonimmigrant with authorization to remain in the United States from September 10, 1999 until September 16, 2001. Although the record reflects the beneficiary was in the United States during the entire qualifying period, during more than half of his qualifying experience, from September 25, 1998 until September 10, 1999, the beneficiary was an M-1 nonimmigrant, a classification with highly restrictive employment regulations.¹

In support of the petition, [REDACTED] Master of the petitioning temple states:

In July 1991, [the beneficiary] came to the City of Ten Thousand Buddhas (CTTB), headquarters of this Association located in Talmage, California, to attend the Transmission of the Three Platforms of Precepts and during that visit, formally became a Buddhist by taking refuge. He also received the Five Lay Precepts and the Bodhisattva Precepts, which were administered by the Venerable Master. These events marked the beginning of [the beneficiary's] affiliation with this Association.

* * *

In 1994, [the beneficiary] enrolled [in] our Sangha & Laity Training Program (SLTP) located at CTTB and began Buddhist religious training in earnest by attending its regular classes and mandatory daily traditional rituals . . . [the beneficiary] taught on a part time basis Buddhist music, Chinese, Buddhist Study and Community Service at our Instilling Goodness Elementary & Developing Virtue Secondary Boys School . . . Since September of 1998, DRBA sponsored [the beneficiary] as a religious worker under R-1 status, and he has been diligently carrying out his religious vocation since then.

DUTIES AND RESPONSIBILITIES OF RELIGIOUS WORKER

[The beneficiary] continues to perform the aforementioned duties as a full time teacher. Additionally, [the beneficiary] also serves as a Disciplinary/Dormitory Superintendent (boys), guiding dorm boys in their daily life, including offering advise [sic] in regulating diet and sleep, in maintaining help, in selecting entertainment, and is available for counseling them individually on as needed. [The beneficiary] leads the dorm students to attend daily evening recitation, a required ceremony attended by all resident clergy and

¹ See 8 C.F.R. §§ 214.2(m)(13) and (14) which indicate that except for temporary employment for practical training after completion of the student's course of study, an M-1 nonimmigrant may not accept employment.

laity in this community. In addition, Monday through Friday following evening ceremony, he tutors dorm students during evening study hall.

In response to the director's request for evidence, the Dharma Master provides a more detailed description of the beneficiary's duties each week with the approximate time spent in each activity. The Dharma Master states:

The beneficiary's week consists of 41 hours of teaching and working with the students of DRBA. [The beneficiary] spends five hours a week teaching topics which include reading, writing, and calligraphy in Chinese to the students of DRBA. For approximately four hours per week, he teaches choir, violin and recorder Boroque. He is also responsible for leading physical education activities for the students which include basketball, football, running high jump and physical strength activities which amounts to three hours per week.

Additionally, [the beneficiary] spends 25 hours a week in serving as a Disciplinarian/Dormitory Superintendent (boys), guiding dorm boys in their daily life, including offering advice in regulating diet and sleep, in maintaining their health, in selecting entertainment, and is available for counseling them individually as needed. [The beneficiary] also leads the dorm students to attend daily recitation, a required ceremony attended by all resident clergy and laity in this community. In addition, Monday through Friday following evening ceremony, he tutors dorm students during evening study hall.

Although the petitioner claims that the beneficiary's duties as a teacher "consist of 41 hours of teaching and working with the students," the actual breakdown of the beneficiary's responsibilities show five hours a week teaching Chinese, approximately four hours a week teaching music, and three hours a week leading physical education activities, for a total of 12 hours a week. There is no explanation for what teaching duties encompass the beneficiary's remaining 29 hours. The Dharma Master indicates that the beneficiary's duties as a disciplinarian/dormitory superintendent, which require 25 hours per week, are *in addition*, to the beneficiary's purported 41 hours as a teacher.

The director approved the petition on August 24, 2001. Subsequently, on October 19, 2001, the beneficiary filed a Form I-485 Application to Register Permanent Residence or Adjust Status. As part of the adjustment application, the beneficiary submitted Form G-325A, Biographic Information. Instructed, on that form, to list his employment over the past five years (1996-2001), the beneficiary indicated that he was a "religious student" from August 1994 until August 1999 and that he was a "religious worker" from September 1999 to the present.

On April 16, 2004, the director issued a notice of intent to revoke, stating, in part, that the petitioner provided no evidence of remuneration and that the beneficiary worked for the petitioner on a part-time basis. Therefore, the director determined the petitioner had failed to establish the beneficiary's continuous work during the requisite two-year period.

In response to the director's notice, counsel provides a new description of the time spent by the beneficiary performing his duties as teacher and dormitory superintendent. Counsel states:

[The beneficiary] participates in the pre-dawn liturgy with the full monastic community of the City of Ten Thousand Buddhas. Monday through Friday, he leads a meal offering with the dorm students from 6:15 to 7:00 a.m. From 8:00 to 8:45 he teaches meditation to high school students. Two days a week he teaches music from 8:50 to 10:30 a.m. From 10:30 to noon he guides the dorm students to participate in the meal offering and transference. Monday through Friday from 12:5- to 1:45 he teaches Chinese class, using Buddhist texts as teaching materials (the Buddhist Canon is traditionally in the Chinese language). On Saturdays, he and his students devote themselves to community service. From 1:40 to 2:25, [the beneficiary] teaches Buddhist studies to high school students. From 2:30 to 3:15 he teaches meditation and Buddhism to 7th and 8th grade students. From 3:20 to 4:05, he tutors Chinese on Mondays, participates in community service with students on Wednesday and Thursday, and provides individual counseling on Friday and Saturday, including religious, disciplinary, personal and character development counseling. From 6:30 to 7:30, [the beneficiary] guides the students to participate in the evening liturgy in the Main Recitation Hall. He is responsible for dorm supervision all day on Sundays as well as three evenings a week. [The beneficiary] also teaches monastics and Buddhist music to the monastic community on Sunday afternoons.

We note that counsel's description fails to separate the beneficiary's time spent performing duties as a teacher from the time spent performing the duties of a dormitory superintendent. Regardless, counsel's description does not indicate that the beneficiary's duties required him to work full-time in either position. The *total* time listed in counsel's description, for the duties of both positions adds up to 30 hours per week. The remaining duties for which counsel does not provide actual times, including tutoring Chinese one day a week, participating in community service two days a week, and providing counseling 2 days a week, does not appear to even bring the total to 35 hours per week.

In response to the notice of intent to revoke, the petitioner submits several letters from people who claim to have worked with the beneficiary as a counselor, dormitory superintendent, and teacher, as well as other positions, since 1998. Gwo Chang Shr, former principal of the petitioner's boys' school states the beneficiary "declin[ed] any compensation from the school from 1998 to 2000."

The petitioner also submits a letter from the beneficiary in which he states:

During the two years prior to filing the I-360 petition, from September 29, 1998 through September 29, 2000, I worked for DRBA as a volunteer. DRBA has provided for [sic] all of my financial needs. I live at DRBA owned property located at the City of Ten Thousand Buddhas in Talmage, California. I do not pay rent because my room and board is provided and paid for by DRBA. My meals are also provided by DRBA. During these two years and up to the present, I take all of my meals at the community hall in a meal ceremony. I do not eat at restaurants and I do not shop for my own food. Should I become ill or require medical attention, DRBA pays for any medical expense directly to the clinic or doctor.

The beneficiary's statement contradicts statements made with the original filing, in response to the director's notice of intent to revoke and with his October 2001 assertion that he did not begin his "religious work" until September 1999 because his studies did not end until August 1999. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or

reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The director revoked the petition based on the determination that because the beneficiary's position appeared to be voluntary and there was "no evidentiary documentation of tax documents," the petitioner could not establish that the beneficiary had the requisite two years of continuous experience in the religious occupation for which classification is sought. The director also noted that the beneficiary was working on a part-time basis while also attending classes.

On appeal, counsel states, "in September 1998, before [the beneficiary] completed the program, he discovered his vocation as a teacher and began working full time for DRBA as a teacher and dorm superintendent at DRBA's Developing Virtue Secondary School. *He completed the training program in February 2000, taking five and a half years instead of the standard four years to complete the course work because he was working and attending school simultaneously.*"

[Emphasis added.]

Counsel then states:

From September 1998 to the present, [the beneficiary] has served in a full time capacity as a religious worker for the petitioner . . . [The beneficiary] signed a contract with DRBA in which he agreed to work full time in exchange for room, board, medical expenses and teacher training courses . . . All of [the beneficiary's] material needs are met by the DRBA and he has never depended no supplemental employment or solicitation of funds for support.

To substantiate the claim that the petitioner provides for the beneficiary's material needs, counsel submits copies of bills and receipts which demonstrate the petitioner covers the beneficiary's health care and insurance, and additional evidence that it provides for the beneficiary's basic needs, including room and board. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982), indicates that religious work can count as "employment" even if the compensation took the form of room, board, stipends, etc., rather than a fixed hourly salary. In this instance, we find that the petitioner clearly provided for the beneficiary, and therefore the beneficiary is not considered an uncompensated volunteer.

However, despite finding that the beneficiary was not a volunteer, the evidence in the record does not support a finding that teaching was the beneficiary's principal activity; rather, it was a part-time activity tied to his ongoing studies, as well as other duties. In a 1980 decision, the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980). That fact pattern appears to mirror closely the pattern in this proceeding.

Counsel submits a signed statement from Rev. Heng Liang who claims that the beneficiary took "required courses in Chinese, Evening Lecture and Daily Ceremony in the early mornings and evenings when he was not teaching. In this way, [the beneficiary] was able to work full time and complete the training program." Counsel refers to the previously submitted document of the beneficiary's transcripts. The transcripts, however, do not corroborate the assertions made by counsel or Rev. Liang as they do not demonstrate the times the classes purportedly undertaken by the beneficiary in the "early mornings and evenings" were actually offered at that time. In light of the statements in the record that the beneficiary begins his day as

early as 6:15 when he “leads the meal offering with the dorm students” and ends his day as late as 7:30 when he “guides the students to participate in the evening liturgy,” Rev. Liang’s statement that the beneficiary undertook his classes in the early mornings and evenings, is not credible. The record does not contain a copy of the beneficiary’s actual schedule or other evidence to establish it was possible for the beneficiary to attend school and work on a full time basis. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Moreover, the record does not reflect that the beneficiary duties as a teacher require full-time work. Given the petitioner’s description of the beneficiary’s duties as a teacher and a dormitory superintendent, we find that each position is distinct from the other. It is clear that the petitioner’s duties encompass two separate positions rather than one position, which encompasses the duties of a teacher and a dormitory superintendent. The petitioner’s attempt to cobble a full-time position out of these two separate positions is not sufficient to meet the requirements of the regulation, as neither position requires full-time work.

The next issue is whether the beneficiary will be employed in a qualifying vocation or occupation. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

Professional capacity means an activity in a religious vocation or occupation for which the minimum of a United States baccalaureate degree or a foreign equivalent degree is required.

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, fundraisers, 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.

8 C.F.R. § 204.5(m) 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*” (emphasis added).

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position it is offering qualifies as a religious occupation as defined in the regulation. The statute is silent on what constitutes a “religious occupation” and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term “traditional religious function” and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation reflects that non-qualifying positions are those whose duties are primarily administrative or secular in nature.

Thus, we interpret 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 regulations specify that religious occupations involve activities that relate to traditional religious functions. The nature of the activity performed must embody the tenets of the particular religion and have religious significance. Their service must be directly related to the creed of the denomination.

In response to the director’s notice and on appeal, counsel states that because the beneficiary “engages in religious instruction and counseling as part of his daily tasks,” the director erroneously treated the beneficiary’s position as a religious occupation rather than a religious vocation. Counsel argues that the beneficiary’s “taking of vows and total commitment to religious life, his rigorous training in the doctrine and practice of Buddhism, the petitioner’s full financial support of the beneficiary and his accountability to the petitioning organization, all demonstrate that he is engaged in a vocation, not an occupation.”

The record reflects that at the time of filing, the beneficiary had taken specific vows in the Buddhist faith, namely the Five Precepts and the Bodhisattva vows. There is no evidence that these vows are the same vows as taken by Buddhist nuns and priests. In fact, a document submitted into the record by the petitioner entitled, “Propagating the Dharma: The City of Ten Thousand Buddhas,” indicates that “monks and nuns . . . observe the monastic precepts, while the lay community in the City observes the five precepts.”

We note that the record does contain evidence that in June 2004, the beneficiary was ordained as a Buddhist monk. However, pursuant to the plain language of the statute and regulation, if the beneficiary seeks to enter the United States to work as Buddhist monk, he must have at least two years of experience *as a Buddhist monk* immediately prior to the filing date of the petition. Because the beneficiary was not fully ordained as a Buddhist monk at the time of filing, we cannot find the beneficiary was a qualifying religious worker, pursuing a vocation, at the time of filing. A visa petition may not be approved based on speculation of future eligibility or after the petitioner becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

Further, throughout the record, the petitioner has variously described the beneficiary’s work as being that of a “religious worker,” “teacher,” and “dormitory superintendent.” There is never any reference to the beneficiary as a Buddhist monk. Therefore, the record does not support counsel’s contention that the beneficiary has been or would be pursuing a religious vocation as defined under the religious worker provisions.

In the alternative, counsel then refers to the portion of the director’s decision in which he determined the beneficiary does not have the qualifications necessary for his position to qualify as a professional capacity and argues that because the beneficiary works in a religious occupation, no bachelor degree is required. While we agree that no bachelor’s degree is required in instances where an alien is employed in a qualifying religious occupation, we must first make a determination as to whether the beneficiary’s position is a qualifying occupation.

In his decision, the director noted that there was no evidence or any assertion that the beneficiary’s position “requires formal religious training or theological education in order to perform” his duties. On appeal, counsel

argues that the director erred in finding that a religious worker employed in a religious occupation must meet particular educational requirements. We agree with counsel's argument and find that although the beneficiary must be qualified for his occupation, the regulation requires no specific religious training or theological education.

Counsel further argues that the beneficiary's position as a religious instructor and a religious counselor qualify as a religious occupation and that the beneficiary's duties relate to a traditional religious function. We do not agree. Although the petitioner identifies the beneficiary's job titles with those found in the regulation as qualifying occupations, it is important to consider the actual duties of the position. A religious organization cannot secure benefits for an ineligible alien simply by referring to the alien's position with a title such as "Religious Instructor" or "Religious Counselor." In short, the beneficiary's job *duties*, rather than his title, will determine his eligibility. To hold otherwise would permit religious organizations to sidestep immigration law simply by giving qualifying job titles to all their employees.

The regulatory definition at 8 C.F.R. § 204.5(m)(2) clearly states that some occupations do not qualify as religious occupations, notwithstanding the religious character of the employer. Thus, it can be concluded the fact that the beneficiary teaches at a religious institution does not automatically make the beneficiary's position a religious occupation. If there is no meaningful or significant distinction between the beneficiary's work at a secular institution and the petitioning religious school, then there is no reasonable basis to determine that the beneficiary's work is a traditional religious function rather than a pervasively secular activity.

The record reflects that as part of his responsibilities as a teacher, the beneficiary teaches classes in Chinese, music, and physical education. The record reflects that the beneficiary also leads students in community service. Counsel states that the teaching of Chinese language, "particularly in its written form," relates to a traditional religious function because "the Buddhist canon is written in Chinese . . . [and] all of the Venerable Master Hua's teachings are in his native language, Chinese." Counsel then argues "just as a student of Christian theology would study Hebrew and Aramaic in order to better understand the Bible, any serious student of Buddhism must study the Chinese language in order to better understand Buddhist teachings."

Similarly, counsel further argues that the teaching of "Buddhist music functions as a way to make Buddhist concepts real, as a conduit to the sacred world and as an act of devotion or offering. Because music itself is a part of the practice of Buddhism, teaching music allows students to become better followers of music.

Upon consideration of the available evidence, we find counsel's claim regarding the religious nature of teachers at the petitioning school, combined with the evidence in the record to be credible and persuasive in this regard. The context of the Buddhist instructors at the petitioning school appears to be central to Buddhist identity, rather than general enrichment; the teaching of Buddhism to Buddhists at a Buddhist school can be differentiated from the teaching of French or Spanish to students at a public school. We, therefore, withdraw the director's finding that the position of teacher at the petitioning school is not a religious occupation.

Notwithstanding this finding, however, we do not find that the record establishes the beneficiary will be employed on a full-time basis in a religious occupation. Although the beneficiary indicates the beneficiary is a "religious instructor" and a "religious counselor," there we find no evidence to support this assertion.

First, given the fact that the petitioner has described two, distinct positions, a “religious instructor” and a “religious counselor,” and that the record does not establish the beneficiary will work full-time in either position, we do not find the petitioner will employ the beneficiary in a religious occupation.

Second, we do not find that the beneficiary’s duties are tantamount to a finding that the beneficiary is a “religious counselor.” The fact that the beneficiary’s position may require him to guide his students “in their daily lives, giving them advice on diet and health, selecting entertainment, and providing individual counseling,” does not make the beneficiary a “religious counselor.” The position and duties described by the petitioner throughout the record are that of a dormitory superintendent and do not rise to the level of a religious counselor.

Accordingly, we agree with the director’s determination that the petitioner has failed to establish the beneficiary seeks to enter the United States to work in a religious vocation or occupation or that the beneficiary has been carrying on such work continuously for at least the two-year period prior to the time of filing.

This finding calls into question an issue beyond the decision of the director; whether the petitioner has made a qualifying job offer. As noted above, established case law indicates that part-time employment is not continuous engagement in a religious occupation or vocation. Because both of the positions in which the beneficiary could engage are only part-time, they cannot qualify as a religious vocation or occupation. This determination is a further impediment to the approval of the petition.

The next issue concerns the job offered to the beneficiary. The regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to demonstrate how the alien will be paid or remunerated if the alien will work in a professional religious capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support.

The petitioner indicated that the beneficiary would receive a salary of \$880 per week, plus room, board, medical needs and necessities. In denying the petition, the director stated that the record contains no evidence that any of this compensation was ever provided to the beneficiary. The director also cited language indicating that the petitioner had not established that the beneficiary will not be dependent on supplemental employment or solicitation of funds for support.” We note that the above regulation requires only that the beneficiary will not be *solely* dependent on supplemental employment or solicitation of funds for support. Notwithstanding the copies of bills and receipts contained in the record which demonstrate the petitioner covers the beneficiary’s health care and insurance, and additional evidence that it provides for the beneficiary’s basic needs including room and board, by asserting that the beneficiary would receive a salary, room, and board, the petitioner effectively asserted that the beneficiary would not be solely dependent on income from other sources.

Pursuant to the above facts, the director’s finding regarding the job offer cannot stand.

The remaining issue is whether the petitioner has the ability to pay the beneficiary the proffered wage. The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the

priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

In his decision, the director noted the petitioner had filed "more than 140 immigrant/nonimmigrant" petitioner for religious workers and found the evidence in the record did not establish the petitioner's ability to pay the beneficiary.

On appeal, Rev. Liang states:

The denial indicates that none of the individuals for whom an I-360 has been filed is listed on our Form DE-6 for the quarter ending June 30, 2003 and thus these individuals are "not working for the petitioner." Of the 54 individuals listed, 51 of them are monks and nuns. The law does not require monks and nuns to receive salaries. Since the monks and nuns of our denomination take a vow of poverty, to receive a salary for their work would contradict their vows. For these reasons, none of the monks and nuns that we have sponsored appeared on the Form DE-6 as none accept a salary for their work. Nevertheless, they are employed by our organization.

As evidence of the petitioner's ability to pay, the petitioner submitted copies of bank statements, quarterly tax returns and W-2 forms for its employees. This evidence, however, is dated *after* the time of filing so is insufficient to demonstrate the petitioner had the ability to pay at the time of filing in 2000.

Although the petitioner does not submit audited financial statements or annual reports, the record does contain a copy of the petitioner's 1999 Form 990 federal tax return.

On appeal, counsel states that the petitioner "is a very large well established organization. It owns millions of dollars worth of property, has millions of dollars in assets and numerous employees."

Based on our previous determination that the petitioner has been providing for the beneficiary's basic needs, including room and board since the time of filing, we find such evidence to be prima facie evidence of the petitioner's ability to pay. We, therefore, withdraw the director's finding in this regard.

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 burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.