



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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

01



FILE:

WAC 06 262 52974

Office: CALIFORNIA SERVICE CENTER

Date: **MAY 01 2008**

IN RE:

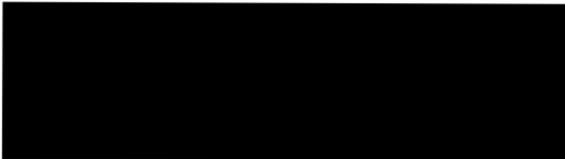
Petitioner:

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.

2 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is an inter-denominational Christian ministry. It seeks to classify the beneficiary as a 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), to perform services as a choir director (sometimes referred to as a “tour director”). The director determined that the petitioner had not established that the beneficiary had the requisite two years of denominational membership or continuous work experience as a choir director immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that it qualifies as a tax-exempt religious organization, or that the beneficiary’s proffered position qualifies as a religious occupation.

On appeal, the petitioner submits a brief from counsel and several exhibits.

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 Revenue 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).

TAX-EXEMPT STATUS

The first issue relates to the petitioner’s tax status. 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization seeking to employ the beneficiary qualifies as a non-profit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The petitioner's initial submission included a copy of a determination letter from the Internal Revenue Service (IRS), indicating that the Continental Singers at [REDACTED] Reseda, California is exempt from income tax under section 501(c)(3) of the Internal Revenue Code (IRC). The letter is dated April 16, 1968. The accompanying articles of incorporation identify that entity's president as Cameron D. Floria, the same individual identified as the petitioning entity's current president.

On December 11, 2006, the director issued a request for evidence (RFE), instructing the petitioner to submit an IRS determination letter that shows the exempt entity's Employer Identification Number (EIN). The EIN does not appear on the IRS letter from 1968. In response, the petitioner indicated that it had already submitted a copy of its IRS determination letter.

On March 19, 2007, the director issued a second RFE, in which the director noted that the address on the 1968 IRS letter does not match the petitioner's current address. The director requested evidence to show that the petitioning entity at its current address is tax-exempt. In response, the petitioner stated that the 1968 letter was the only documentation that the IRS provided as evidence of tax-exempt status.

The director also noted that a music publishing company called Praise Land LLC shares the petitioner's address. The director inquired as to the relationship between that company and the petitioner, and asked whether the beneficiary works for that company. In response, [REDACTED] stated: "Praise Land LLC is a small music publishing company owned and operated by our ministry's President, [REDACTED]. The LLC exists in name only and does not conduct any formal business other than receiving of music royalties. The beneficiary does no work in association with Praise Land LLC."

The director denied the petition on September 4, 2007, stating on page 5 of the decision:

The petitioner has not submitted sufficient evidence to demonstrate that the petitioning organization is federal tax exempt. The president of the petitioning organization owns a for-profit music publishing entity "Praise Land LLC" that is also based from the petitioning organization's address. The petitioner stated Praise Land LLC's only business activity is to receive music royalties. The president of the petitioning organization appears to be profiting from the activities of the alleged non-profit petitioning organization. The tax exempt certification letter is dated in 1968 and indicates an address that is not the petitioning organization's current address. The petitioner has not submitted sufficient evidence to prove the petitioning organization is the same organization listed on the tax exempt certification.

Public records also indicate the [petitioner's] status of incorporation was revoked on May 1, 2001. Therefore, the petitioner has not established that the organization seeking the beneficiary's services is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 or is eligible for that exemption.

On appeal, [redacted] claims "the LLC has been abandoned and never came into operation as a legal entity." The supplemental submission includes a "Declaration of Perjury [*sic*]" by [redacted], who states:

The LLC PraiseLand Music was formed to publish praise music I was intending to write myself.

The PraiseLand LLC never came into operation. It owns no songs, has published no songs or any other material. No state fees have been paid since its inception so it is surprising that it still exists. It has earned no money. No royalties of any kind were ever collected or paid to me or anyone else. As such, no taxes have ever been filed or paid.

In short, the LLC PraiseLand Music is and has been totally dormant and is not doing any business currently in California, Tennessee, Hawaii or any other state.

We note that [redacted] May 2007 statement ("The LLC exists in name only and does not conduct any formal business other than receiving of music royalties") seems to imply that Praise Land LLC actually did receive music royalties, there is no documentary evidence of such royalties.

Whatever the exact status of Praise Land LLC, the director cited no authority, statutory, regulatory or otherwise, to show that the president's involvement with a separate for-profit corporation has any effect on the petitioner's tax-exempt, non-profit status. Music royalties are "profits" generated in the normal course of business, rather than charitable donations, and therefore it is reasonable for those profits to go to a for-profit corporation. Indeed, it would arguably have been of greater concern if those royalties accrued directly to the petitioner rather than to a separately-incorporated entity that exists solely to collect those royalties.

Regarding the director's allegations relating to the petitioner's corporate status, [redacted] states that the petitioner "has never had its incorporation revoked. An easy check on line at the California secretary of state's office shows conclusively that the corporation is active and in good standing at the current Ventura address. The corporation was in suspension at one point for a short time due to a clerical error but was immediately reinstated when discovered." The petitioner submits a printout from the web site of the California Secretary of State, <http://kepler.sos.ca.gov/corpdata/ShowAllList?QueryCorpNumber=C0525785>, which lists the petitioner's corporate status as "Active" as of October 25, 2007. The listing shows the same address as the one shown on the Form I-360 petition. The agent for service of process is identified as [redacted] who is the Vice President of the petitioning entity, and the 1967 incorporation date corresponds to the materials submitted previously, including the 1968 IRS letter.

8 C.F.R. § 103.2(b)(16)(i) states:

Derogatory information unknown to petitioner or applicant. If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section. Any explanation, rebuttal, or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.

We note that the information relating to “public records” was not included in the petitioner’s submissions. The director’s introduction of outside evidence in this manner falls within the scope of the above-cited regulation. The director erred by failing to advise the petitioner of this evidence before rendering the decision, although the petitioner has had the opportunity to address the evidence on appeal.

There exist “public records” showing that the petitioner’s corporate status was revoked on May 1, 2001, and that no subsequent action took place; but these records derive not from California, but from Colorado, where the petitioner’s status as a “Foreign Non-Profit” corporation was revoked in 2001. Public records of both aforementioned states were available to the director at the time the decision was rendered. The director did not explain why the decision rested on the petitioner’s corporate status in Colorado, and ignored the petitioner’s current status in its home state of California. Whatever the repercussions the revocation may have with regard to the petitioner’s ability to conduct business in Colorado, it does not appear to nullify the petitioner’s federal tax-exempt status under section 501(c)(3) of the IRC.

The evidence of record, therefore, amply supports the conclusion that the petitioning entity is an active corporation in the state of California, and the same corporation that the IRS found to be tax exempt in 1968. That the petitioner has relocated during the intervening 40 years is not remarkable, and apart from this address change, the record contains no evidence or information to suggest that the petitioner is not the entity incorporated in 1967 and recognized as tax-exempt by the IRS the following year.

For the above reasons, the AAO withdraws the director’s finding regarding the petitioner’s tax-exempt status. The evidence of record consistently establishes that the petitioner is tax-exempt as a religious organization under section 501(c)(3) of the IRC.

DENOMINATIONAL MEMBERSHIP

The next issue to be addressed concerns the beneficiary’s past membership in a religious denomination. The regulation at 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 religious denomination with which the prospective employer is affiliated. The petition was filed on August 30, 2006.

Visa documents in the record indicate that the beneficiary has been authorized to work for the petitioner since 2003. IRS Form W-2 Wage and Tax Statements indicate that the petitioner paid the beneficiary \$28,741.44 in 2004 and \$24,824.10 in 2005.

The documentation described above establishes the beneficiary's involvement with the petitioner in 2004 and 2005. It remains to be established that this involvement consisted of continuous employment and membership in a religious denomination.

In a letter dated July 24, 2006, [REDACTED] Vice President and Producer of the petitioning entity, offered this description of the petitioning entity:

Formed in 1967 as an inter-denominational ministry, the purpose of [the petitioner] has been to spread the Gospel of Jesus Christ through the performing arts. [The petitioner] is a non-profit religious organization exempt from taxation pursuant to subsection 501(c)(3) of the Internal Revenue Code. . . .

Our vision is "to be the premier music missions organization providing life-changing opportunities for Christians in the U.S. and around the world."

The petitioner does not claim to be a church. The beneficiary, on his résumé, indicated that he served as a "Worship leader at Calvary Community Church in Westlake, CA" in 2005-2006, during which time he was working for the petitioner.

In the December 2006 RFE, the director instructed the petitioner to submit evidence of qualifying tax-exempt status (which the petitioner had previously submitted) and evidence of a connection between the petitioner and any churches that employed the beneficiary during the two-year qualifying period (which is not applicable because the beneficiary did not work for anyone other than the petitioner during that period). The RFE contained no reference to the issue of the petitioner's religious denomination.

Andrea Minor, Creative Arts Director at Calvary Community Church, asserted that the beneficiary "has been part of our congregation and vocal performing arts ministry . . . beginning in December 2004." [REDACTED] stated that the beneficiary was a volunteer at that church, and the beneficiary's tax documents reflect no income from the church.

In the March 2007 RFE, the director asked: "What do you consider your religious denomination?" [REDACTED] replied that the petitioner "is not a 'church' per se," but rather "an interdenominational Christian organization which considers itself to be part of the larger Evangelical Protestant family." [REDACTED] asserted that the petitioner "does not share a common facility with another church."

The director denied the petition on September 4, 2007, based in part on the finding that the petitioner "has not established their organization is closely associated with a qualifying religious denomination." The petitioner, on appeal, argues that the director has erroneously limited eligibility to churches, whereas the petitioner falls under the broader category of "religious organizations."

Counsel correctly argues on appeal that 8 C.F.R. § 204.5(m)(2) states that an inter-denominational religious organization which is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 will be treated as a religious denomination. The record supports the petitioner's self-identification as an

inter-denominational religious organization, and the director has adduced no evidence contrary to such a finding. Because the record amply documents the beneficiary's continuous involvement with the petitioner throughout the two-year qualifying period, the AAO hereby withdraws the director's finding that the petitioner has not established that the beneficiary meets the two-year denominational membership requirement.

TWO-YEAR EXPERIENCE REQUIREMENT

In addition to the two-year denominational membership requirement, there is a two-year experience requirement, to which we now direct our attention. 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 experience in the religious vocation, professional religious work, or other religious work. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a choir director throughout the two years immediately prior to the petition's August 30, 2006 filing date.

In his initial letter, ~~Mr. Butler~~ described the position, and the beneficiary's experience:

As Choir Director, [the beneficiary] will be responsible for conducting the choir, leading and directing music rehearsals and performances, and leading worship times. He will also be responsible for overseeing the well-being of the tour group, spiritual development of the group's members, counseling, and public relations.

. . . [The beneficiary] has been working with [the petitioner] as an R-1 Religious Worker since 2003. As International Talent Representative and Director, he has auditioned singers and musicians from all over the world, facilitated the applications process, and counseled individuals in the organization.

A page apparently from the petitioner's web site, <http://www.continentalsingers.org>, identifies the beneficiary as one of seven "Talent Representatives" and one of nine "Directors." In an April 24, 2006 letter, originally submitted in support of an application for an extension of the beneficiary's R-1 nonimmigrant status, Mr. ~~Butler~~ referred to the beneficiary as "an International Talent Representative and Music Ministry Director."

The beneficiary's own résumé contains two distinct entries relating to his work with the petitioner during the 2004-2006 qualifying period. These entries read as follows:

Choir Assistant Director
2005

- Music Rehearsals
- Bible Studies

- Production Assistant
- Overseas Facilitator/Translator (Chile, South America)

Talent Scout/Recruiter
2003-2006

- Audition singers/musicians from all over the world
- Application process facilitator
- Counselor

In the December 2006 RFE, the director requested “evidence of the beneficiary’s work history for the years 2004, 2005 and 2006,” including evidence of compensation. In response, [REDACTED] stated that the petitioner’s initial submission answered many of the director’s questions. In a separate letter dated February 20, 2007, he added:

[The beneficiary] began employment with us as an R-1 religious worker in 2003, working approximately 40 hours per week.

. . . During his time here, [the beneficiary] has been invaluable in directing and managing our performing arts tour groups. He auditions singers and musicians from all over the world, facilitates the application process, conducts the choir, and leads and directs music rehearsal[s] and performances. In addition, [the beneficiary] is responsible for the spiritual development of the tour group. He leads multiple prayer and worship sessions, prepares daily group devotions, and also serves as the director of the many unscheduled and impromptu counseling and spiritual discussions while on the road. . . .

[The beneficiary] directed his first two tours last year.

The last sentence quoted above indicates that the beneficiary did not direct tours prior to *circa* early 2006.

The petitioner submitted a copy of the beneficiary’s IRS Form W-2 for 2006, showing earnings of \$24,074.20 for that year. The petitioner also submitted a copy of the beneficiary’s 2006 IRS Form 1040EZ income tax return, on which the beneficiary listed his occupation as “Talent Representative” and claimed no earnings beyond those shown on the corresponding Form W-2.

In the March 2007 RFE, the director requested additional details regarding the beneficiary’s work history, including “all the job duties the beneficiary does throughout the entire year.” In response, [REDACTED] stated:

The beneficiary has been employed with [the petitioner] as an R-1 religious worker since May 5, 2003. At first, he was hired as a Talent Scout. In July 2005, the beneficiary became an Assistant Tour Director. In June 2006, the beneficiary was promoted to Tour Director. . . .

As an Assistant Director, the beneficiary was responsible for assisting the Tour Director in overseeing and managing the tour. The schedule and responsibilities for Assistant Director

and Tour Director are almost the same except that the Director . . . has the ultimate discretion in decision making. . . .

Since being promoted to Tour Director, [the beneficiary] has led two tours (a two months tour in the summer and a three months tour in the fall).

In the denial notice, the director found that the record consistently indicated that the beneficiary did not work as a choir director throughout the two-year qualifying period, but rather worked as a recruiter during most of that period and was not “promoted to Tour Director” until about two months before the petition’s August 2006 filing date. The director stated that the petitioner did “not convincingly establish that the beneficiary worked on a full time basis in the proffered position [*i.e.*, choir director] throughout the required two year period.”

On appeal, Mr. Butler states: “Although called by slightly different names over the 2 years prior to the application, such as Youth Worker, Talent Director, Tour Director, Talent Scout, Recruiter or whatever for various accounting purposes, the job functions were continuously those of a Choir Director, only on a much larger scale than one local church.”

In a supplementary brief, counsel argues:

The beneficiary has held a number of different titles during his employment with [the petitioner]. However, his duties have essentially been the same throughout.

The beneficiary’s main duties have been to recruit performers and train them in frontline ministry using performing arts, which involves leading them in Bible Studies, religious counseling, and leading them in ministering to the public, as well as more traditional performing arts training like rehearsing and practicing.

The petitioner’s own materials do not support the above argument. The petitioner’s *Manual for the Assistant Director*, for instance, states that assistant directors “have unique opportunities not offered to anyone else [including] Directors,” and delineates between the functions of an assistant director and a talent representative. The petitioner and even the beneficiary himself (in his résumé) have repeatedly distinguished between the different aspects of the beneficiary’s work for the petitioning entity.

The AAO affirms the director’s finding that the petitioner did not work continuously as a choir director throughout the two years immediately preceding the petition’s filing date.

RELIGIOUS OCCUPATION

The final issue under consideration is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) defines “religious occupation” as:

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, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined at 8 C.F.R. § 204.5(m)(2). The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

Citizenship and Immigration Services therefore interprets the term “traditional religious function” to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

Pursuant to the discussion earlier in this decision, the petitioning entity itself is considered “the denomination” for the purposes of this petition. Therefore, in order to establish that the beneficiary qualifies for immigration benefits as a choir director, the petitioner must establish that its choir directors are, as a rule, permanent, full-time, salaried employees rather than short-term and/or part-time workers, and that they are compensated employees rather than volunteers reliant on outside support.

The petitioner’s initial description of the beneficiary’s duties appears earlier in this decision. The initial submission also included [REDACTED]’s outline of “the schedule of an average day for the Choir Director,” as follows:

8:00 a.m.	Travel to concert venue
10:00 a.m.	Group devotion on the bus
12:00 p.m.	Lunch
1:00 p.m.	Prayer and sharing on the bus
3:00 p.m.	Arrive at concert venue – unload equipment and set up
4:00 p.m.	Sound check
5:00 p.m.	Dinner
5:30 p.m.	Rehearsal
6:15 p.m.	Prayer and worship
7:00 p.m.	Concert
9:30 p.m.	Tear down

In the December 2006 RFE, the director requested “a **detailed description** of the work to be done, including specific job duties, level of responsibility/supervision, and number of hours per week to be spent performing each duty” (emphasis in original).

In response, [REDACTED] cited the petitioner’s initial submission and stated:

The Choir Director is responsible for various musical and spiritual activities, such as conducting the choir, leading and directing music rehearsals and performances, and leading worship times. Additionally, he or she will also be responsible for overseeing the spiritual development of the group's members, counseling, and public relations.

Because of the musical and spiritual responsibilities, the position requires a dynamic, dedicated Christian with a background in music.

The petitioner submitted a "Weekly Schedule" which shows the following duties, repeated over each weekday:

7:45 a.m.	Morning Meeting Travel to Venue
9:00 a.m.	Devotion Time Testimonies Bible Study/Spiritual Development and Training
12:00 p.m.	Lunch
1:00 p.m.	Concert Evaluation
2:00 p.m.	Rehearsal Time/Musical Development
4:00 p.m.	Concert Prep.
5:00 p.m.	Dinner
7:00 p.m.	Concert

The above schedule is generally similar but not identical to the schedule submitted previously.

In the March 2007 RFE, the director instructed the petitioner to "explain how the duties of the position relate to a traditional religious function." In response, [REDACTED] stated:

The proffered position is Tour (Choir) Director. . . . The Director is responsible for the day-to-day operations of one of our tours. . . . A Director serves several roles:

- 1) Spiritual Mentor
- 2) Musical Conductor and Production Director
- 3) Road manager
- 4) Primary Church/Host Liaison
- 5) Policy Enforcer

. . . As the Spiritual Mentor for tour members, the Director acts as the de facto pastor for the group while on the road. The spiritual growth of the individual tour member is the direct responsibility of the Tour Director, and is the highest priority of the tour.

First and foremost, the Director leads all regular prayers [*sic*] times. The Directors pause rehearsal every so often to read Scripture. The Director also prepares and leads devotions, during which the members review and discuss how a particular passage affects their own personal life. Additionally, the Director leads Bible Study, helping tour members better understand the meaning of the Bible. Furthermore, the Director gives a short sermon during each night's concert, much like a pastor would during regular service. As the spiritual mentor of the tour members, Directors must be prepared to answer any faith related questions a tour member may have.

The petitioner submitted a copy of a payroll report dated May 2007, which lists 20 paid employees divided into six categories: "booking," "recruiting," "Jeremiah People," "administration," "chief executive" and "operations." The beneficiary's position is classified under "recruiting."

In denying the petition, the director indicated that much of the evidence of record places the petitioner in the "Recruiting" department, and that the petitioner had not established that the petitioner's duties relate to a traditional religious function.

On appeal, [REDACTED] states: "Just as in a traditional church setting where the Choir Director recruits the members of the choir from the congregation, the Talent Recruitment function is part of being a Choir Director with [the petitioner]. It is on a much larger scale than in a church . . . [but] is nonetheless an imperative element of the Choir Director's job."

Examination of the petitioner's evidence undermines the above argument. The petitioner's response to the second RFE included a list headed "Directors 2007." This list includes fourteen names, only four of which also appear on the May 2007 payroll report: the beneficiary, Todd Garten ("recruiting"), [REDACTED] ("administration") and [REDACTED] ("booking"). A fifth name from the payroll record, [REDACTED] (classified under "Jeremiah People"), appears on a second director's list, dated March 2007. This does not indicate that the petitioner consistently classifies tour directors as "recruiters" simply "for . . . accounting purposes."

The "Directors 2007" list shows electronic mail addresses for each of the directors. The addresses for the four individuals named in the payroll records each have the domain name "continentalsingers.org"; the addresses for the other directors correspond to generic providers such as "yahoo.com" and "comcast.net." This does not appear to be a coincidence. From the evidence the petitioner has submitted it appears, instead, that the petitioner's paid employees were assigned electronic mail addresses through the petitioner's web site, whereas outside volunteers relied on their respective personal electronic mail addresses.

More significantly, taken together, the payroll printout and the list of directors indicate (by omission) that the majority of the petitioner's directors are unpaid. Also, we note that [REDACTED] is among the named directors, and yet clearly he has continued his administrative functions as vice president of the petitioning entity; there is no evidence that he is classified as the petitioner's vice president merely "for . . . accounting purposes." This supports the finding that the duties of a director do not amount to full-time, year-round employment.

Materials submitted throughout the course of the proceeding indicate that the “tour members” on the tours organized by the petitioner are not paid employees; they are volunteers who pay their own way via donations to the petitioning entity, or solicit sponsors. It appears, from the materials provided by the petitioner, that the phrase “tour members” is not limited to singers and musicians, but rather that directors and assistant directors are, likewise, volunteers who are not compensated for their work as directors and assistant directors. The available evidence, therefore, leads us to conclude that the beneficiary is compensated for his non-directorial recruiting functions, for which he was already receiving payment before he undertook any directorial duties for the petitioner.

Because the record does not permit us to conclude that the petitioner pays the beneficiary for his work as a director, we must conclude that the petitioner has paid the beneficiary, and continues to pay him, for his work as a talent scout and recruiter. The petitioner has not shown that the beneficiary’s work in recruiting relates to a traditional religious function, or differs significantly from the work of a talent scout or recruiter for a secular performing arts troupe. Rather, the petitioner has attempted to minimize this aspect of the beneficiary’s work, by focusing instead on the beneficiary’s duties as a tour director.

Based on detailed payroll evidence and other materials in the record, the AAO concludes that the position of a choir director is not an “occupation” within the petitioning organization, but rather one of many unpaid volunteer positions, and that a minority of the petitioner’s directors are individuals whom the petitioner employs in other positions. We affirm the director’s finding that the petitioner has not shown the position of choir director to be a religious occupation within the petitioning entity.

JOB OFFER

The payroll documentation raises an additional issue that the director did not address. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

If a worker is to receive no salary for religious work, the assumption is that he/she would be required to earn a living by obtaining other employment. *See Matter of Bisulca*, 10 I&N Dec. 712, 713-14 (Reg. Commr. 1963) and *Matter of Sinha*, 10 I&N Dec. 758, 760 (Reg. Commr. 1964). Because an individual holding an uncompensated position would likely be solely dependent on supplemental employment or solicitation of funds for support, an offer for such a position would not be a qualifying job offer under 8 C.F.R. § 204.5(m)(4). Therefore, the available evidence indicates that the offer for the petitioner to serve as a director is not a qualifying job offer because it involves no remuneration. The beneficiary does hold a remunerative position with the petitioner, but he held this position before he began directing for the petitioner, and that position therefore appears to be a parallel position rather than a component of the “job offer” upon which the petitioner has predicated the petition.

The AAO concludes, based on the above discussion, that the petitioner has not extended a valid “job offer” for the petitioner to serve as a compensated choir director/tour director (as opposed to a recruiter who voluntarily assumes ancillary duties as an unpaid director).

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.