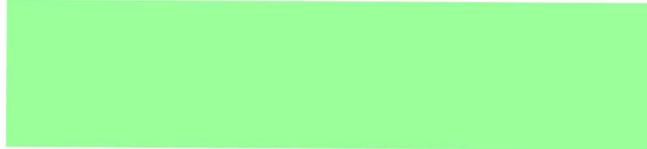
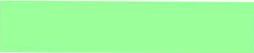


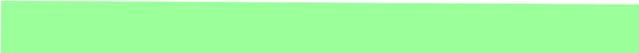
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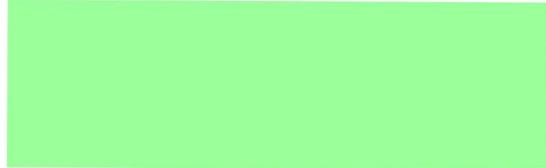


DATE: **DEC 29 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary: 

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

 Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. We will withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, we will remand the petition for further action and consideration

The petitioner is a Roman Catholic religious order. It seeks to classify the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R), to perform services as an "Instructor/Teacher" at [REDACTED] Puerto Rico. The director determined that the petitioner failed to establish that the beneficiary will be employed in a qualifying position. The director also found that the petitioner failed to establish how it intends to compensate the beneficiary.

On appeal, the petitioner submits a brief and additional evidence.

Section 101(a)(15)(R) of the Act pertains to an alien who:

- (i) for the 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; and
- (ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii).

Section 101(a)(27)(C)(ii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii), pertains to a nonimmigrant who seeks to enter the United States:

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
- (II) . . . 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) . . . 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.

The regulation at 8 C.F.R. § 214.2(r)(1) states that, to be approved for temporary admission to the United States, or extension and maintenance of status, for the purpose of conducting the activities of a religious worker for a period not to exceed five years, an alien must:

- (i) Be a member of a religious denomination having a bona fide non-profit religious organization in the United States for at least two years immediately preceding the time of application for admission;
- (ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week);
- (iii) Be coming solely as a minister or to perform a religious vocation or occupation as defined in paragraph (r)(3) of this section (in either a professional or nonprofessional capacity);
- (iv) Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and
- (v) Not work in the United States in any other capacity, except as provided in paragraph (r)(2) of this section.

#### I. QUALIFYING POSITION

The first issue to be discussed is whether the petitioner has established that the beneficiary will be employed in a qualifying position.

##### A. The Law

The regulation at 8 C.F.R. § 214.2(r)(3) includes the following definitions:

*Religious occupation* means an occupation that meets all of the following requirements:

- (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination;
- (B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination;
- (C) The duties do not include positions which are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible; and
- (D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

*Religious vocation* means a formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia, to a religious way of life. The religious denomination must have a class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion. Examples of vocations include nuns, monks, and religious brothers and sisters.

*Religious worker* means an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister.

### B. Analysis

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on March 25, 2014. The petitioner indicated on the petition that the beneficiary will work as an "Instructor/Teacher" at [REDACTED] and will receive wages and healthcare coverage. The petitioner described the beneficiary's proposed duties as "Teach high school students about certain subjects and promote the Ignatian spirituality and pastoral care." In a February 18, 2014 letter accompanying the petition, the petitioner identified itself as [REDACTED] and stated that [REDACTED] is "a secondary school for young men under the direction and sponsorship of [the petitioner]." The petitioner stated that the beneficiary is a member of its religious order and that the petitioner "assumes all responsibility for his living expenses during his commitment to [REDACTED]"

The director issued a Request for Evidence (RFE) on April 16, 2014, in part requesting additional information and evidence about the proffered position. The director instructed the petitioner to clarify whether the beneficiary will be working in a religious occupation or a religious vocation, and to submit evidence to establish that the proffered position meets the requirements of the corresponding regulatory definition.

In response to the RFE, the petitioner submitted a description of the proffered position, indicating that the beneficiary will be involved in [REDACTED]'s "Program of Community Service:"

Specific Duties: He will be collaborating in the elaborate Community Service Program of [REDACTED], involving students of the 10<sup>th</sup>, 11<sup>th</sup>, and 12<sup>th</sup> grades, volunteer parents of the PTA [a]nd other faculty members in the reflection on the experiences.

The position description also stated that the beneficiary will collaborate with the [REDACTED] chaplain in organizing retreats for upperclassmen. The petitioner submitted an additional document describing the position, which stated that "service to the community and the world" is "one of the most important aspects of Jesuit education" and that the community service program is "focused on social justice and Catholic Social Teaching." In addition, the petitioner submitted information about [REDACTED] community service program, which included the following:

The Community Service Program is an integral part of the curriculum and a requisite for high school graduation. The Tenth Grade students fulfill this requisite through a semester of preparatory formation and a second semester of work in one of the centers served by . The majority of Eleventh Grade students fulfill this requisite by dedicating two class periods in each six-day cycle of their third year to work in service centers approved by . Some students can fulfill the service commitment outside the school day of or by offering tutorial experience in itself. Periodic reflection on the service experience is an essential part of the program.

The petitioner also submitted information about its mission, and its requirements for its teachers, including the expectation that every faculty member will “play an active role in the Christian formation of the students.”

The petitioner submitted a summary of the beneficiary’s “History as Jesuit,” indicating that he entered the “Jesuit novitiate” on August 16, 2009, took his “First Vows” on July 31, 2011, and began his “Regency, Teaching experience as part of his Jesuit Formation,” in 2014. The petitioner submitted a copy of the beneficiary’s handwritten “First Vows as Jesuit,” which were dated July 31, 2011. The beneficiary’s vows were not written in English and were not accompanied by a full, certified English language translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). A separate document, entitled “Vow formula,” indicated that the Jesuit first vows include a vow of “perpetual poverty, chastity and obedience in the Society of Jesus,” and a promise to “enter that same Society in order to lead my entire life in it, understanding all things according to its Constitutions.”

The director denied the petition on July 19, 2014, in part finding that the petitioner failed to establish that the beneficiary will be employed in a qualifying religious occupation or religious vocation. The director found that the proffered wages contradicted the beneficiary’s purported vow of poverty and that the petitioner had not established that the proffered position qualifies as a religious vocation. Further, the director found that the petitioner failed to establish that the duties of the proffered position relate to a traditional religious function and primarily relate to inculcating or carrying out the religious creed and beliefs of the denomination. Accordingly, the director found that the petitioner failed to establish that the position qualifies as a religious occupation.

In a brief submitted on appeal, the petitioner states that the beneficiary “will be serving in a vocation with the Petitioner and will be employed in a religious occupation.” The petitioner again asserts that the beneficiary will work for pursuant to the “Regency” stage of his formation in becoming a Jesuit Priest. The petitioner asserts that the beneficiary’s teaching duties are primarily related to a traditional religious function and that the position of teacher is recognized as a religious occupation within the Jesuit Order. The petitioner submits information about “Jesuit Formation,” which includes the following description of the “Regency” stage of formation.

Regency – the scholastic lives and works in a typical Jesuit community, as opposed to the “formation communities” he has lived in so far. The years of regency are a time

for men to be fully involved in the community life of the province/region. Men are assigned to two or three years of regency depending on their age, apostolic needs of the province/region and individual apostolic desires. Over the years the men are assigned to a full time in ministry, an apostolate, which is traditionally teaching in a secondary school.

(Emphasis in original). In an August 14, 2014 letter, [REDACTED], Administrative Director of [REDACTED] states that “For years, priests and other member[s] of the Jesuit order have offered their services in our school, in positions such as presidents, principals, chaplain and teachers.” In addition, the petitioner submits a printout about “Jesuit Education,” from the website of [REDACTED]. The document states, “Since the time they launched their first school in 1548, the Jesuits have believed that a high quality education is the best path to meaningful lives of leadership and service,” and goes on to describe the Ignatian pedagogical model, which includes five key teaching elements, “Context, Experience, Reflection, Action, and Evaluation.”

Regarding the proffered salary indicated on the petition, the petitioner asserts that this money will go to the Jesuit community rather than to the beneficiary as an individual. The petitioner submits an August 13, 2014 letter from its controller, [REDACTED] which states in part:

Unless it has been authoritatively decided otherwise, whatever Jesuits acquire, they acquire for the community which they belong [sic]. The salary goes directly to the Jesuit community that he is a member of. Jesuits do not get to keep their salaries because of their vow of poverty, but live instead on an allowance form [sic] the community.

As cited above, under 8 C.F.R. § 214.2(r)(3), the duties of a religious occupation “must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination,” and must be recognized as a religious occupation within the denomination. The petitioner has established that the beneficiary’s duties of teaching students about community service and Catholic social justice are primarily related to, and clearly involve, carrying out the religious creed of the petitioner’s denomination. Further, the petitioner has submitted evidence that the position of teacher is recognized as a religious occupation within the Jesuit Order. Accordingly, the petitioner has established that the proffered position qualifies as a religious occupation, and we withdraw the director’s findings on this issue.

## II. COMPENSATION

The next issue to be discussed is whether the petitioner has established how it intends to compensate the beneficiary.

### A. The Law

The regulation at 8 C.F.R. § 214.2(r)(11) provides:

*Evidence relating to compensation.* Initial evidence must state how the petitioner intends to compensate the alien, including specific monetary or in-kind compensation, or whether the alien intends to be self-supporting. In either case, the petitioner must submit verifiable evidence explaining how the petitioner will compensate the alien or how the alien will be self-supporting. Compensation may include:

(i) *Salaried or non-salaried compensation.* Evidence of compensation may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS [U.S. Citizenship and Immigration Services]. IRS [Internal Revenue Service] documentation, such as IRS Form W-2 [Wage and Tax Statement] or certified tax returns, must be submitted, if available. If IRS documentation is unavailable, the petitioner must submit an explanation for the absence of IRS documentation, along with comparable, verifiable documentation.

\* \* \* \*

B. Analysis

On the Form I-129 petition, the petitioner described the proffered compensation as \$22,200 per year and “employer sponsored health coverage.” In its February 18, 2014 letter, the petitioner indicated that it would provide for the petitioner’s “living expenses” while he teaches at [REDACTED]. The petitioner submitted evidence that the petitioner and [REDACTED] are both tax-exempt organizations under a group exemption granted by the IRS to the United States Conference of Catholic Bishops.

In the April 16, 2014 RFE, the director requested additional evidence of how the petitioner intends to compensate the beneficiary under 8 C.F.R. § 214.2(r)(11). In response to the RFE, the petitioner submitted copies of 2013 Commonwealth of Puerto Rico Department of the Treasury Form 499R-2/W-2PR, Withholding Statements, indicating compensation from [REDACTED] to two individuals for \$23,964.52 and \$8,550.86 respectively. In a June 6, 2014 cover letter, the petitioner stated that the forms were being submitted as “proof of past compensation for [a] similar position” and “proof of past compensation for a religious worker.” The petitioner also submitted a May 2, 2014 letter from its Regional Superior, Rev. [REDACTED], stating that the beneficiary will reside at “the Jesuit Residence” within the premises of [REDACTED] and that the petitioner “will cover his expenses of room and board, and all other outlays that [the beneficiary] will incur during his time as a Faculty member of [REDACTED].”

In denying the petition, the director found that the submitted evidence of past compensation, equivalent to IRS Forms W-2, pertained to an organization other than the petitioner. The director discussed the letter from the Regional Superior asserting the petitioner’s intent to provide the beneficiary’s room and board and living expenses. The director found that the petitioner “never stated it would provide room and board for the beneficiary,” and that it “did not provide any evidence pertaining to the non-salaried compensation.”

On appeal, as stated previously, the petitioner indicates that the beneficiary will earn a salary from [REDACTED] but that the money will go to the petitioner who will provide for the beneficiary's support. The petitioner submits information about the "Jesuit Vow of Poverty," which states that, in "working communities" of Jesuits, the money used to cover the living expenses "usually comes from the salaries of members in that community." In the August 13, 2014 letter, the petitioner's controller asserts that the petitioner "has ownership of the building and the plot of land" used as a residence for Jesuits at [REDACTED]. The petitioner submits pictures and a map depicting its purported residence hall at [REDACTED]. The petitioner also submits a copy of its July 2014 [REDACTED] portfolio summary indicating that the petitioner had a total value of \$6.76 million during the first quarter of 2014, when the petition was filed. In addition, the petitioner submits a balance sheet for 2012 and January 1, 2013 to June 30, 2013 and an annual budget for 2014-2015. The submitted budget includes a breakdown of expenses showing monies set aside for items such as insurance, health insurance, "Vocations," and "Formation." Finally, the petitioner submits copies of [REDACTED] bank statements and financial statements.

The petitioner's initial filing included a discrepancy regarding the intended compensation, with the petition indicating salaried compensation and the accompanying letter stating that the petitioner would provide non-salaried compensation. 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 petitioner's explanation regarding Jesuit compensation is consistent with the evidence submitted in response to the RFE and on appeal. Accordingly, we find that the petitioner has resolved the inconsistency and established that it intends to provide non-salaried compensation to the beneficiary. Further, through the financial documentation submitted on appeal, the petitioner has established how it intends to provide the proffered non-salaried compensation. Therefore, the director's finding on this issue is withdrawn.

The above discussion indicates that the petitioner has overcome all stated bases for denial of the petition. However, review of the record shows additional grounds of eligibility that have not been established. We conduct appellate review on a de novo basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

### III. COMPLIANCE REVIEW

#### A. The Law

The regulation at 8 C.F.R. § 214.2(r)(16) reads:

*Inspections, evaluations, verifications, and compliance reviews.* The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an

interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, or satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

#### B. Analysis

The record does not contain evidence of a compliance review, onsite inspection or other verification of this petitioner's claims. The director shall determine whether the petitioner has satisfied the regulation at 8 C.F.R. § 214.2(r)(16) and whether a compliance review, onsite inspection or other verification of the petitioner's claims is appropriate in the instant petition.

#### IV. CONCLUSION

As discussed above, the petitioner has overcome all stated basis for the denial decision, but the petition is remanded for the director to consider whether the petitioner has satisfied the requirements of 8 C.F.R. § 214.2(r)(16).

The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.