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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

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**U.S. Citizenship  
and Immigration  
Services**

[REDACTED]

D13

DATE: DEC 13 2011 OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

[REDACTED]

**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
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. The AAO will dismiss the appeal.

The petitioner identifies itself as a Seventh-day Adventist (SDA) church. It seeks to classify the beneficiary as a nonimmigrant religious worker under section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1), to perform services as a pastor. The director determined that the petitioner had not successfully completed a compliance review or submitted sufficient documentation relating to the beneficiary's intended compensation.

On appeal, the petitioner submits a short statement from counsel as well as copies of financial documents. Counsel indicates that a brief will be forthcoming within 30 days. To date, nine months after the filing of the appeal, the record contains no further substantive submission from the petitioner. The AAO therefore considers the record to be complete as it now stands.

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)(I) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(I), pertains to a nonimmigrant who seeks to enter the United States solely for the purpose of carrying on the vocation of a minister of a specified religious denomination.

The U.S. Citizenship and Immigration Services (USCIS) 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.

The first issue under review concerns the compliance review process. The USCIS 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.

The petitioner filed the Form I-129 petition on November 17, 2009. Part 1 of the form identified the petitioner as "Bethesda Seventh-day Adventist Church" (BSDAC), 3231 West Broward Street, Fort Lauderdale, Florida. Section 2 of the accompanying employer attestation identified the "Employer/Organization" as "Bethesda Christian Center of Fort Lauderdale Inc." (BCCFL), at the same address. A religious denomination certification identified the "Employing Organization" as BCCFL, the "Religious Denomination" as the "Seventh-day Adventist Church," and the "Attesting Organization" as BSDAC. [REDACTED], identified as the "Pastor/Chairman/President" of BSDAC, signed all of the forms described above.

In a separate letter, [REDACTED] stated: "Bethesda Seventh-day Adventist Church is a branch of Bethesda Christian Center of Fort Lauderdale." The petitioner submitted a copy of a determination letter from the Internal Revenue Service (IRS), establishing the tax-exempt status of BCCFL. The IRS letter listed BCCFL's Employer Identification Number (EIN) as 55-0798067. The Form I-129 petition showed the same EIN for BSDAC.

Under the USCIS regulations at 8 C.F.R. §§ 214.2(r)(1)(i) and (8)(ii), the beneficiary must have belonged to the petitioner's religious denomination throughout the two years immediately preceding the filing of the petition. The beneficiary's ordination documents identify him as an ordained pastor of the SDA Church. The petitioner's initial submission did not include any documentation to establish the petitioner's claimed affiliation with the Seventh-day Adventist Church. The inclusion

of the term "Seventh-day Adventist" in the name of the church is not sufficient evidence of denominational affiliation.

A USCIS officer attempted to visit the petitioning church on two occasions, at noon on February 24, 2010 and again at 9:35 a.m. on February 26, 2010. On both occasions, the gated fence surrounding the church was locked. The officer was unable to reach any church personnel by telephone.

Subsequently, the officer contacted the Florida Conference of Seventh-day Adventists in an attempt to verify the petitioner's claims. In a letter dated June 24, 2010, [REDACTED], director of human resources for the Florida Conference of Seventh-day Adventists, stated:

When it is determined that a candidate from outside the United States should be invited to serve in a Conference church, the Conference will sponsor the visa petition.

...

All visa petitions sponsored for individuals to be employed by the Conference are to be signed only by the designated officials of the Conference. The Conference has clearly communicated to its local church pastors and other individuals that only the Conference office may sponsor and process visa petitions. No other persons are authorized to sign petitions. . . . Currently, the individuals designated and authorized to sign petitions are myself and [REDACTED], the Conference Executive Secretary.

A search of public records associated [REDACTED] with BCCFL, but revealed no records relating to BSDAC.

On August 3, 2010, the director issued a request for evidence, advising the petitioner of the above information. In response, counsel stated:

[T]he Petitioner is in all respects qualified as a bona fide religious organization. In response to your comment that the CIS on-site investigator failed to find the Pastor at the inspection visit, the President of the Petitioner/Organization has stated that he was never contacted by telephone by the inspector to open the premises. [REDACTED], the president of the petitioning organization has a day job. Further, the church conducts services on Saturday, and Friday night, and also on Wednesday nights and there were no inspections at this time. . . .

The petitioner has also informed that there are more than 50 Seventh Day Adventist Churches operating in the state of Florida outside of the jurisdiction of the Florida conference. That Petitioner may operate outside of the jurisdiction of the Florida conference does not in any way invalidate its status as a "bonafide religious organization." [The beneficiary] enjoys full ordination from the official conference

of Seventh Day Adventist Churches in Haiti and that is documented by the earlier submissions.

There is no legal requirement either in statute or in regulation which requires that the Florida Conference of Seventh Day Adventist Churches be the petitioning sponsor for a pastor of a Seventh Day Adventist Church in Florida operating outside of the jurisdiction of the Conference.

The petitioner submitted no documentary evidence to support counsel's claims. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel cannot resolve the issue simply by declaring that some SDA churches in Florida are outside the jurisdiction of the SDA's Florida Conference. The petitioner must submit some form of verifiable evidence so that USCIS can distinguish between a factual observation and an *ad hoc* excuse to explain away derogatory information.

On October 5, 2010, the director issued a notice of intent to deny the petition, again citing the information from [REDACTED] as grounds for denial of the petition. In response, the petitioner submitted documentation from <http://www.sunbiz.org>, the web site of the Florida Department of State Division of Corporations. Counsel observed that the materials show that BCCFL registered BSDAC as a fictitious name on October 9, 2002.

The printouts, however, show that the fictitious name registration expired on December 31, 2007. The printout containing the application to renew the fictitious name registration dates from October 18, 2010, which would indicate that the petitioner did not renew the long-expired registration until after it received the notice of intent to deny the petition.

The petitioner, incorporated as BCCFL, cannot unilaterally affiliate itself with the SDA Church simply by registering a fictitious name that includes the phrase "Seventh-day Adventist." The record shows that the SDA Church is hierarchically organized, with regional conferences reporting to "the General Conference of Seventh-day Adventists" (as mentioned in [REDACTED] letter). The petitioner submitted no evidence of recognition or affiliation under the General Conference.

The regulation at 8 C.F.R. § 214.2(r)(3) defines a "religious denomination" as a religious group or community of believers that is governed or administered under a common type of ecclesiastical government and includes one or more of the following:

- (A) A recognized common creed or statement of faith shared among the denomination's members;
- (B) A common form of worship;
- (C) A common formal code of doctrine and discipline;

- (D) Common religious services and ceremonies;
- (E) Common established places of religious worship or religious congregations; or
- (F) Comparable indicia of a bona fide religious denomination.

The petitioner submitted no evidence to meet the above requirements. It simply adopted the name “Seventh-day Adventist” after incorporating under a different name.

The director denied the petition on January 28, 2011, citing information from the Florida Department of State Division of Corporations showing “that the petitioning organization’s status had expired as of 12/31/2007 and therefore, the petitioner was not in fact actively maintaining its standing with the local government.” The director acknowledged the petitioner’s submission of the October 18, 2009 printout “showing that the petitioning organization has applied to renew its fictitious name registration,” but concluded that “the record clearly points to the fact that the petitioning organization is not functioning in the capacity claimed . . . in the petition.” The director concluded “that the petitioning organization is not in fact actively engaged in day to day business as claimed in the petition.”

On appeal, counsel asserts that the “Petitioner’s non-alliance with the Florida Conference . . . is immaterial to whether the Petitioner is a bonafide religious organization.” The petitioner must establish that the beneficiary has, for the two years immediately prior to the filing date, been a member of the petitioner’s religious denomination. The record amply establishes that the beneficiary is a member of the SDA Church, but the record contains nothing to show that the petitioner belongs to that organization. The term “SDA Church” is not simply a blanket term of general description; it relates to a specific, formally organized denomination with a centralized leadership and a geographically organized hierarchy. The petitioner has not established that affiliation; it has simply inserted the phrase “Seventh-day Adventist” into its fictitious name.

Efforts to verify the petitioner’s claims failed, because the petitioning church was locked on more than one occasion and an SDA Florida Conference official did not corroborate the petitioner’s claims. The AAO affirms the director’s finding that the petitioner did not satisfactorily complete a compliance review, which is grounds for denial under the regulation at 8 C.F.R. § 214.2(r)(16).

The second stated basis for denial concerns the beneficiary’s intended compensation. The USCIS regulation at 8 C.F.R. § 214.2(r)(11) states, in part:

*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. IRS documentation, such as IRS Form W-2 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.

The petitioner, in the initial submission, stated that it would pay the beneficiary \$32,000 per year. The petitioner claimed gross annual income of \$130,000 and net annual income of \$20,000. The petitioner also indicated that it had no paid employees as of the filing date. Therefore, the beneficiary's salary would represent a new expense in addition to the petitioner's existing expenses. The petitioner's claimed net income of \$20,000 per year is not sufficient to cover this new \$32,000 annual expense.

The petitioner's initial submission did not include any financial documentation. The director's correspondence of August and October 2010 did not raise the issue of compensation.

In the denial notice, the director stated: "The petitioner . . . fail[ed] to submit evidence of the petitioning organization's financial capability. . . . [T]he evidence submitted by the petitioner does not establish verifiable proof of how the petitioner will compensate the alien." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

On appeal, counsel protests that the director raised the compensation issue "for the first time" in the denial notice. If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS in its discretion may deny the application or petition for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS. 8 C.F.R. § 103.2(b)(8)(ii). Under this regulation, the director did not err by raising the compensation issue for the first time in the denial notice. Nevertheless, because the appeal is the petitioner's first opportunity to address the issue, the AAO will give full consideration to the financial documentation submitted on appeal.

The petitioner submits two "Transaction Histories" for the petitioner's bank accounts, which, counsel states, "show[s] the Petitioner received tithes of approximately \$10,000.00 a month and had bank balances at the end of each month in excess of the amount of Beneficiary's monthly offered salary." The histories, spanning January 2010 to February 2011, show combined balances of \$33,831.47 as of February 22, 2011. The checking account balance only briefly exceeded \$10,000 (in early February 2010), and sometimes dipped below \$2,000. Most of the balance figures are

below \$6,000. The earliest balance shown is \$9,330.34 on February 1, 2010. The most recent figure is \$9,274.95 as of February 22, 2011, which is a slight decline from the earliest balance.

The other bank account shows minimal activity, building from a negative balance of -\$44.18 on February 26, 2010 to a maximum balance of \$26,552.22 (due in large part to a \$15,000 deposit in May 2010) before dropping to \$24,556.52 after the last recorded transaction (an interest deposit in January 2011).

The bank documents do not establish the petitioner's financial status as of November 2009, when the petitioner filed the petition. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. 8 C.F.R. § 103.2(b)(1).

Furthermore, the assertion that each month's bank balance was sufficient to cover the beneficiary's monthly salary is misleading, because each month's balance does not exist in isolation. It is, rather, what remains after the previous month's expenses. The petitioner paid no salaries during the period covered by the bank documents. Therefore, salary payments to the beneficiary would represent a new, additional drain on the petitioner's finances, not already reflected in the bank statements. Thus, a year's worth of financial documents would need to show at least \$32,000 in net income just to keep up with the ongoing expense of the beneficiary's salary payments.

Without paying any salaries, the 2010-2011 bank documents show a net income of about \$25,000 per year, which is less than a year's salary. The bank documents do not show that the petitioner's existing balance or income would be sufficient to absorb the additional \$80,000 expense of the beneficiary's proposed \$32,000 annual salary throughout his 30-month term of initial admission as an R-1 nonimmigrant.

For the reasons discussed above, the documents submitted on appeal do not overcome the director's finding that the petitioner has failed to show how it intends to compensate the beneficiary. The AAO therefore affirms the director's finding in this respect.

The AAO may identify additional grounds for denial beyond what the Service Center identified in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

As noted above, the petitioner has submitted printouts from <http://www.sunbiz.org> in support of the petition. By doing so, the petitioner has effectively incorporated the web site's contents into the record by reference.

The AAO consulted the web site for the filing history and current status of BCCFL. The site includes the following information:

**BETHESDA CHRISTIAN CENTER OF FORT LAUDERDALE INC.**

**Document Number** N02000006491  
**Date Filed** 08/27/2002  
**Effective Date** None  
**Status** Inactive

| <b>Event Type</b>                   | <b>Filed Date</b>       |
|-------------------------------------|-------------------------|
| ADMIN DISSOLUTION FOR ANNUAL REPORT | 09/23/2011              |
| REINSTATEMENT                       | 10/18/2010              |
| ADMIN DISSOLUTION FOR ANNUAL REPORT | 09/24/2010              |
| AMENDMENT                           | 08/10/2009              |
| CANCEL ADM DISS/REV                 | 05/01/2009              |
| ADMIN DISSOLUTION FOR ANNUAL REPORT | 09/26/2008              |
| CANCEL ADM DISS/REV                 | 11/07/2007              |
| ADMIN DISSOLUTION FOR ANNUAL REPORT | 09/14/2007              |
| REINSTATEMENT                       | 05/09/2005              |
| ADMIN DISSOLUTION FOR ANNUAL REPORT | 09/19/2003              |
| AMENDMENT                           | 10/08/2002 <sup>1</sup> |

The administrative dissolution of the petitioning corporation appears to indicate that the petitioner no longer exists as a legal entity capable of employing the beneficiary, or eligible for tax-exempt status, although the petitioner can apply for reinstatement. (As the above table shows, Florida has dissolved and reinstated the petitioning entity on numerous prior occasions.)

The AAO will dismiss the appeal 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 met that burden.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> Source: [http://www.sunbiz.org/scripts/corevt.exe?action=DETEVE&inq\\_doc\\_number=N02000006491&filing\\_type\\_fld=DOMNP](http://www.sunbiz.org/scripts/corevt.exe?action=DETEVE&inq_doc_number=N02000006491&filing_type_fld=DOMNP) (printout added to record November 23, 2011).