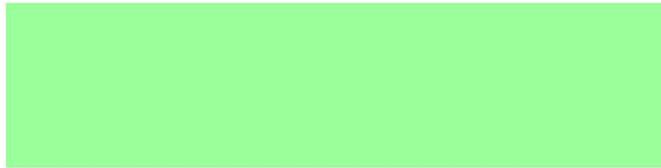
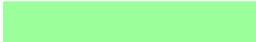




U.S. Citizenship  
and Immigration  
Services

(b)(6)

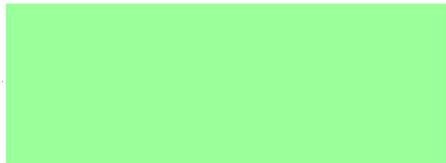


DATE: JUL 29 2013 OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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:

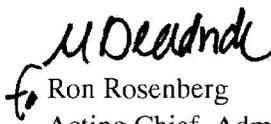


INSTRUCTIONS:

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,



Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The matter is now before the AAO on appeal. The AAO will dismiss the appeal.

The petitioner is a Home Health Education Service (HHES) of the Seventh-day Adventist (SDA) denomination. It seeks to classify the beneficiary as a nonimmigrant religious worker under 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 associate pastor for outreach evangelism. The director determined that compliance review failed to substantiate the stated terms of compensation.

On appeal, the petitioner submits a brief from counsel and copies of previously submitted exhibits.

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 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 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 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 a Form I-129 petition on the beneficiary's behalf, with receipt number [REDACTED] on September 25, 2009. In that petition, the petitioner indicated that the beneficiary "will receive a base package salary that includes the following: Travel allowance \$400 per month, Family Health Plan and \$25,000 per year." The director approved the petition on October 13, 2009 and the beneficiary began working as an R-1 nonimmigrant religious worker.

Seeking to extend the beneficiary's stay, the petitioner filed the present Form I-129 petition on April 6, 2012. In the employer attestation that accompanied the petition, the petitioner described the beneficiary's intended compensation: "\$24,000 per year, plus travel and other allowances, subject to the extension of R1 status. The Beneficiary is allowed to benefit from distribution of Bibles & religious materials. [REDACTED] provides insurance (liability, accidental, medical and travel), as requested."

In an accompanying letter, [REDACTED] associate director of the petitioning entity, stated:

Subject to the approval of this R1 extension, we are proposing that the Beneficiary be given a base salary of \$2,000 per month (\$24,000 per year) plus travel and other allowances.

. . . [T]he Beneficiary has been working . . . on a non-salaried basis, with room and board provided within the framework of the local churches he has served.

Our records indicate that as part of his non-salaried remuneration package in 2011 [the beneficiary] was given \$12,686 for living allowance and personal expenses. . . . However, in the course of this ministry, the Beneficiary received some direct contributions from local Seventh-day Adventist churches, bringing his total income to \$22,988, which he reported on his 2011 Federal Income Tax Return. . . .

Remuneration for the Beneficiary will continue to be provided within the framework of the Seventh-day Adventist Churches being served, with a remuneration package of approximately \$24,000 per year plus other allowances and benefits. . . .

Please note that there is no sub-contracting or any arrangement of a similar nature. . . .

[The petitioner's] annual revenue is approximately \$25 million. . . . Clearly the [petitioner] has the facilities, supervisory personnel and resources adequate to continue supporting the needs of the Missionary Evangelist Bible Instructors and their supervisors, including the Beneficiary.

(Emphasis in original.) A memorandum of understanding between the petitioner and local churches stated:

From the very beginning, it has been the normal practice that local church entities and members provide lodging, and transportation for the missionary Bible instructors assigned to their areas. The [petitioner] provides financial support, insurance, and other assistance. . . . There is no written agreement between [the petitioner] and local church entities; however, it is the verbal understanding and has been practiced for more than 100 years.

[redacted] pastor of [redacted], stated that his church “would be more than happy to continue giving [the beneficiary] whatever assistance is necessary to accomplish his goals and ambitions, which includes food, lodging and transportation as necessary.”

[redacted] publishing ministries director of the [redacted], stated: “We will continue to be responsible to provide [the beneficiary’s] food, lodging and transportation, as needed. He is also allowed to benefit from the distribution of religious materials to those he ministers to. According to our records, he was given \$12,686.00 for miscellaneous and personal needs during 2011.”

An uncertified copy of the beneficiary’s 2011 IRS Form 1040 U.S. Individual Income Tax Return indicated that the beneficiary and his spouse jointly reported \$6,119 in wages and \$22,988 in business income. The return identified the petitioner’s occupation as “assistant pastor,” and that of his spouse as “student.” On an accompanying Schedule C, Profit or Loss from Business, the beneficiary indicated that he earned \$25,367 in gross business income as a “pastor/evangelist,” with \$22,988 net income after expenses.

In a request for evidence (RFE) dated May 11, 2012, the director instructed the petitioner to submit “independent financial documentation to show the ability to pay compensation for the beneficiary.” The director quoted from the regulation at 8 C.F.R. § 214.2(r)(11)(i). The director also stated:

The petitioning organization explained that the beneficiary received no compensation and he has had no W-2 or 1099-MISC to submit. However, the beneficiary has received salaried income in 2011 and filed a tax return. The submitted 2011 tax return was not completed [*sic*] because it was missing W-2s and/or 1099-MISC forms. Please provide copies of all W-2s and 1099-MISC forms that have not been submitted.

. . . For verification purpose[s], please provide evidence of non-salaried and/or salaried compensation which the beneficiary has received from June 2010 to the filing date in 2012. Evidence may include W2-s [*sic*], 1099-MISC forms, verifiable documentation to demonstrate that room and board, travel and health insurance compensation . . . have been provided for the beneficiary.

In response, Pastor [REDACTED] stated:

For many years, it has been the normal practice that local Seventh-day Adventist Church entities and their membership provide food, lodging, and transportation for the Missionary Evangelist Outreach Workers invited or assigned to their areas. A person does NOT just show up and expect assistance. Instead, provision for the Beneficiary is authorized, pre-arranged, and scheduled through the office of our Regional Supervisor [REDACTED] in this instance) with a specific local church and its members. . . .

The local Seventh-day Adventist Church provides lodging with one or more of their members, along with food, provided by the member or group of members or from a food bank – whatever is needed by the Beneficiary while in the area.

. . . Our records indicate that as part of his non-salaried remuneration package in 2011 [the beneficiary] was given \$12,686 for living allowance and personal expenses. However, in the course of his ministry, the Beneficiary received some undocumented direct assistance from local Seventh-day Adventist churches and members, in addition to food, housing and transportation, which he has honestly and faithfully reported to the IRS, as evidenced by previously submitted Federal Income Tax Returns for 2009 and 2010. See W-2s for the Beneficiary's spouse as submitted, since they filed joint Federal Income Tax Returns.

(Emphasis in original.) The petitioner submitted copies of IRS Form W-2 Wage and Tax Statements, showing that [REDACTED] (an SDA institution) paid the beneficiary's spouse \$4,416.48 in 2010 and \$6,119.30 in 2011. The latter amount matches the amount shown as wages on the uncertified 2011 tax return submitted earlier, but does not substantiate the larger amount claimed as business income on that return. The IRS Forms W-2 showed the beneficiary's spouse's address as an apartment in [REDACTED], Michigan, whereas the tax return showed an address in Brooklyn, New York.

Pastor [REDACTED] also asserted that the petitioner "has lived since 2010 with an elderly Seventh-day Adventist church member." The petitioner submitted interior and exterior photographs of a house, including a room identified as the beneficiary's bedroom. The beneficiary and an elderly woman appear in some of the photographs.

The petitioner submitted copies of letters from several SDA churches, thanking the beneficiary for his participation in various events and activities, but these letters did not mention compensation.

On October 9, 2012, the director issued a notice of intent to deny the petition, based on compliance review site visits conducted earlier in 2012, relating to other claimed employees of the petitioner. The director stated that officials, including Pastor [REDACTED] were "unable to answer" questions about

the claimed employees' work and qualifications; beneficiaries were unavailable for interview at their stated places of work. The director stated:

It was stated that the beneficiary of the instant petition was assigned to "Greater New York and other areas, as assigned." However, [the] above site check failures revealed that beneficiaries were not assigned to any specific group, teams or leadership within the framework of the mission or as indicated in [redacted] support letter. There is no supervision administering their daily schedule. This contradicts [the] framework of the mission [described in] [redacted] support letter. The signatory [redacted] has filed petitions on the beneficiaries' behalves but he has not had any knowledge of the aliens' exact locations and activity assignment and amount of book distribution.

The director observed that, when the petitioner filed its first petition on the beneficiary's behalf in 2009, the petitioner stated that the present beneficiary would receive a travel allowance, health plan, and \$25,000 per year. After the approval of that petition, however, Pastor [redacted] stated: "The Beneficiary has been working on a non-salaried basis." The director asked the petitioner to explain this discrepancy, and also stated that the beneficiary's 2011 income tax return did not reflect the \$12,686 that [redacted] claimed the beneficiary had received that year.

The director stated that "the beneficiary has been directly paid by other SDA Churches. Nevertheless, no evidence [was] submitted to show that these churches have filed a petition for the beneficiary's concurrent employment." The director instructed the petitioner to "explain why the employment did not occur as it was previously presented to USCIS" and to "[s]ubmit evidence to support the beneficiary's past compensation," including "copies of all W-2s and 1099-MISC forms that have not been submitted."

In response to the notice, counsel stated that the petitioner is one of three principal HHES offices in the United States, and that Pastor [redacted] would not be familiar with employees of other HHES offices. Regarding the petitioner's employees, counsel stated: "Pastor [redacted] can not be expected to know every detail of [every] beneficiary's daily routines and other duties as these individuals [are] required to report to their supervisor and not to Pastor [redacted]"

The petitioner submitted an eight-page letter in which Pastor [redacted] referring to himself in the third person, stated that he "IS NOT involved in recruitment, selection, or the supervision of Missionary Evangelists. Neither is he directly involved in the distribution process of materials to these evangelistic workers" (emphasis in original). Pastor [redacted] stated that his task was "immigration oversight, which involves filing the necessary documents for international workers," and as such he does not have detailed knowledge about every beneficiary's employment and working conditions.

Regarding the present beneficiary's past compensation, Pastor [redacted] stated:

The beneficiary was placed on salary in 2009 as was stated in the initial I-129 (Receipt # [REDACTED]). However, with the continuing downturn in the economy in 2010, the beneficiary chose to continue his ministry with non-salaried remuneration. The petitioner continued to be responsible for supervision, food, lodging and transportation in harmony with the local churches being served. The beneficiary never left the employment of the petitioner at any time, and continues to be a faithful worker to this present moment.

The petitioner submitted several exhibits in response to the notice. Most of the exhibits concerned other beneficiaries named in the notice. With respect to the present beneficiary, the petitioner submitted seven letters dated between April and November 2012, as well as IRS documentation from 2009 and 2010.

The petitioner submitted a change of address notice from the beneficiary, who indicated that Hurricane Sandy had temporarily displaced him and his spouse. The record does not show who paid for the beneficiary's housing at the new address.

In a letter dated October 25, 2012, [REDACTED] stated that the beneficiary "was given \$12,686.00 for personal needs during 2011," and that "[t]he amount indicated above was already included in his IRS (income tax) filings" for 2011. [REDACTED] stated that the amount consisted of "SDA Publishing materials that were saleable to church members . . . and in-kind (personal needs)."

The petitioner submitted copies of IRS Forms W-2 and IRS Form 1099-MISC Miscellaneous Income statements containing the following information:

Year	IRS Form	Employer	Employee/payee	Amount
2009	W-2	[REDACTED]	The beneficiary	\$6,000.00
2009	1099-MISC	[REDACTED]	The beneficiary	\$5,250.00
2010	W-2	[REDACTED]	The beneficiary	\$3,000.00
2010	W-2	[REDACTED]	The beneficiary's spouse	\$4,416.48
2011	W-2	[REDACTED]	The beneficiary's spouse	\$6,119.30

[REDACTED] has the same street address as the petitioner, but a different employer identification number, indicating that it and the petitioner exist as separate corporate entities.

IRS transcripts of the joint income tax returns filed by the beneficiary and his spouse for 2010 and 2011 are consistent with previously submitted materials:

Year	2010	2011
Wages, salaries	\$7,416	\$6,119
Gross receipts	\$17,035	\$25,367
Net profit	\$14,865	\$22,988
Total income	\$22,281	\$29,107

The 2010 IRS documents show that the beneficiary earned \$20,035 that year, well below the stated salary of \$25,000, and the petitioner did not establish that it provided the non-salaried compensation listed on the original 2009 petition.

The petitioner submitted no documentation of the beneficiary's claimed business income apart from the IRS transcripts, which do not identify the source of that income. [REDACTED] did not indicate that more than \$12,686 of the claimed 2011 income came from the SDA Church or its affiliated organizations.

In a November 5, 2012 letter addressed to Pastor [REDACTED] director of the petitioning organization, the beneficiary stated:

I have received NO direct payment from the churches for preaching, lectures or seminars. There has been NO concurrent employment at any time. . . . Any other undocumented funds that I reported on my 2011 Federal Income Tax returns were from private or personal contributions given to assist me in my ministry. I simply included these funds as a matter of integrity.

The petitioner submitted copies of previously submitted letters from various SDA churches thanking the beneficiary for his efforts. As stated previously, these letters do not mention the beneficiary's compensation. The petitioner did not submit documentary evidence of the beneficiary's compensation in 2011, and his documented compensation in 2009 and 2010 was substantially less than the \$25,000 per year (plus benefits) that the petitioner had originally claimed he would receive. The petitioner did not show how circumstances had changed to allow it to honor its future commitments to compensate the beneficiary, in a way that the petitioner was unable to do before.

The director denied the petition on February 15, 2013, citing irregularities in the present petition and others. The director stated: "The petitioner failed to establish that the beneficiary is properly employed and remunerated according to the duties and remunerations package described in the petition."

On appeal, counsel states that the basis for denial is "unclear" because many of the grounds establishing a "lack of credibility" relate to petitions for other beneficiaries, filed, in some instances, by other petitioners. Counsel claims that the director, in the denial notice, cited no issues specific to the present beneficiary, and "disregarded" "[p]lausible explanation[s from] the Petitioner."

In a subsequent brief, counsel calls the denial notice "very confusing [and] hard to follow" and states: "It seems like the explanation(s) provided by the petitioner was ignored and information from other petition(s) used to draft a denial for the instant petition. It is not clear which beneficiary was not properly employed and or remunerated." While the organization of the denial notice may not be ideal, the director has, in this proceeding, articulated specific concerns regarding the present petition. Most significantly, the petitioner has not met the terms of compensation set forth in its first petition

on the beneficiary's behalf, and therefore there is reason to question the petitioner's ability or intention to meet the similar terms set forth in the present petition. In place of salary payments, the petitioner claims that the beneficiary has relied upon external contributions, without adequate documentation of the sources or amounts of those contributions.

To overcome these issues, it cannot suffice for the petitioner to claim that the circumstances that led to the suspension of the beneficiary's salary no longer apply, or to observe that the beneficiary reported income from unidentified sources on his income tax return.

The record presents fragmentary and incomplete documentation of the beneficiary's past compensation, and the petitioner's admitted failure to pay the beneficiary's salary in past years is good cause to question its intention and/or ability to do so in the future. One purpose of the compliance review requirement is to ensure that the petitioner abides by the terms under which it seeks immigration benefits for the beneficiary. Here, the compliance review process did not show that the petitioner complied with those terms. These factors warrant denial of the petition.

The AAO will dismiss the appeal for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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). Here, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.