DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. An appeal was dismissed by the Associate Commissioner for Examinations. The matter is again before the Associate Commissioner on motion to reopen. The motion will be dismissed.

The petitioner is a church. It seeks classification of 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), in order to employ her as a catechist at an annual salary of $15,000.

The petitioner filed a Form I-360 petition for special immigrant classification on June 25, 1999. The petition was denied in a decision dated June 12, 2000. The petition was denied on the grounds that the petitioner failed to establish that the beneficiary had satisfied the requirement of having been continuously carrying on a religious occupation for at least the two years immediately preceding the filing of the petition pursuant to 8 C.F.R. 204.5(m)(1). The director also interpreted the lack of evidence of past employment by the petitioner as a failure to establish that the beneficiary would be employed in a qualifying religious occupation, as defined at 8 C.F.R. 204.5(m)(2), in the future.

The petitioner, by and through counsel, filed an appeal from the decision with an appellate brief and additional evidence. The Associate Commissioner, by and through the Director, Administrative Appeals Office ("AAO"), dismissed the appeal finding that the petitioner had failed to overcome either ground for denial. The AAO decision noted, in pertinent part, that the two year minimum period of prior experience was from June 25, 1997 to June 25, 1999 and found that the petitioner's evidence in the form of W-2 tax forms for 1998 and 1999 were insufficient to address that minimal period, specifically June through December 1997.

On motion, counsel now submits, in part, a Social Security Earnings Statement reflecting that the beneficiary earned $4,190 in 1997.

According to 8 C.F.R. 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. In order to prevail on a motion to reopen, the petitioner must establish that the new facts and/or evidence presented are material and were unavailable at the time the prior decision was issued. Id. According to 8 C.F.R. 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

On motion, counsel has submitted new evidence in support of the original petition. He has not advanced a claim that the new evidence was somehow unavailable at the time the petition was

filed, at the time the center director issued a request for additional evidence, or at the time the appeal was filed. Counsel essentially seeks a readjudication of the underlying petition with new evidence. There is no provision for such an adjudication on a motion to reopen. Therefore, counsel failed to establish that this action meets the applicable requirements of a motion to reopen and must be dismissed.

Administrative notice is made that counsel argued on motion that the prior appellate decision was an abuse of discretion and that there must be a good faith basis for questioning the evidentiary weight or timeliness of evidence submitted.

In visa petition proceedings, the burden of proof remains entirely on the petitioner. Section 291 of the Act, 8 U.S.C. 1361. It should be a simple matter to establish a claim that an alien was continuously employed by a church from June 1997 to June 1999. Tax records covering at least the minimum period, such as Forms W-2 and 1040 for the three pertinent years, are primary evidence of the claim and should be furnished at the time the petition is filed. See 8 C.F.R. 103.2(b)(1). Counsel for the petitioner in this matter failed to submit such basic documentary evidence with the petition, in response to a request from the center director, on appeal, or on motion to reopen. Counsel offers no explanation of the apparent inability to furnish such initial evidence.

Furthermore, the 1998 Form W-2 submitted on appeal indicates that the beneficiary earned $14,300 from the church in Social Security wages. The Social Security report submitted on motion reflects the beneficiary's 1998 Social Security earnings as $1,884. This constitutes a discrepancy in the evidence furnished in support of the petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582 (BIA 1988).

In addition, the petitioner originally indicated only that the beneficiary was authorized to remain in the United States from May 1, 1997 to April 30, 2000 as an R-1 nonimmigrant religious worker authorized to be employed only by the petitioning church. The Social Security record reflects, however, that the beneficiary has resided in and been employed in the United States since 1993. This evidence indicates that the petitioner has not been forthcoming with all material facts regarding the beneficiary's immigration status and employment history. Based on a review of the record of proceeding, counsel's allegation that the prior decision was an abuse of discretion is wholly unjustified.

ORDER: The motion is dismissed.