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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: **AUG 09 2006**
WAC 03 261 54575

IN RE: Petitioner: [redacted]
Beneficiary: [redacted]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be dismissed.

The petitioner is a subordinate church of the Church of Scientology. 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 member of the Sea Organization (Sea Org), a religious order of the Church of Scientology. The director determined that the petitioner had not established that the beneficiary's position qualifies as either a religious occupation or a religious vocation, or that the beneficiary had the requisite two years of continuous work experience immediately preceding the filing date of the petition.

The AAO, in dismissing the appeal, withdrew some of the director's findings but affirmed the director's finding that the petitioner had not adequately established the beneficiary's continuous experience during the two-year qualifying period required by section 101(a)(27)(C)(iii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(iii), and 8 C.F.R. §§ 204.5(m)(1) and (3)(ii)(A). Specifically, the AAO indicated that the petitioner had not adequately accounted for the beneficiary's activities in Europe in 2002, despite prior requests from the director for documentation and detailed pay records relating to that period. The AAO stated: "The director requested specific documentation prior to the decision, and the petitioner did not provide it at that time. Therefore, the submission of such documentation at this late stage in the proceeding would not warrant a reversal of the director's decision. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988)." On motion, the petitioner submits payroll records and heavily edited copies of what appear to be telex messages sent to the beneficiary from the petitioner in California.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2) Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.¹

The petitioner has not shown that the documents submitted on motion could be considered "new" under 8 C.F.R. § 103.5(a)(2). All evidence submitted was previously available and could have been discovered or presented in the previous proceeding. As the petitioner was previously put on notice and provided with a reasonable opportunity to provide the required evidence, the evidence submitted on motion will not be considered "new" and will not be considered a proper basis for a motion to reopen.

Motions for the reopening of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden. The motion to reopen will be dismissed.

¹ The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence> . . ." WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).

Counsel argues that *Matter of Soriano* does not apply in this instance, because “[t]he CSC Director failed to articulate the concern, which is the basis of the AAO dismissal, that continuity of religious vocation . . . would be suspect due to six weeks’ travel.” Counsel thus contends that this particular issue was never raised prior to the dismissal, and that the present motion is therefore the petitioner’s first opportunity to respond to the issue.

We do not share counsel’s perspective on this issue. In the request for evidence, issued October 21, 2003, the director’s request for a “letter . . . by an authorized official from the specific location” appeared under the heading “Work History,” along with requests for evidence of payment or other material support. The director also specified that this evidence should cover “the beneficiary’s work history beginning September 18, 2001 and ending September 18, 2003 only.” Thus, the request was clearly tied, from the beginning, to the issue of continuous employment during the qualifying period.

In the denial notice of November 17, 2004, under the heading “Discussion of Two Year Work Experience,” the director noted the petitioner’s failure to “submit an experience letter written by a supervisor or manager in Germany or Italy who is in a position to verify the duties performed and hours worked while outside the United States.” After this discussion, and discussion of other issues relating to the beneficiary’s compensation, the director stated: “In conclusion, the evidence of the record is insufficient to establish that the beneficiary worked in the same capacity as the proffered position during the entire two-year period from September 18, 2001 until September 18, 2003.”

Considering the placement of the director’s observations in the October 21, 2003 request for evidence and the November 17, 2004 denial notice, it is clear that the director discussed the beneficiary’s foreign travel, and the lack of evidence from foreign church officials, in the context of a discussion of the continuity of the beneficiary’s work. Therefore, we find that the director did, in fact, “articulate the concern” that the beneficiary’s travel to Germany and Italy was relevant to the continuity of her religious work during the two-year qualifying period. Counsel suggests no other context that would plausibly explain the director’s remarks. Therefore, we maintain that *Soriano* applies in this instance, as the AAO had previously forewarned.

8 C.F.R. § 103.5(a)(4) states that “[a] motion that does not meet applicable requirements shall be dismissed.” Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

We note that the basis for denial of this petition is not a permanent bar to eligibility; rather, it applies only to a specific period of time. A newly filed petition would involve a different, later two-year eligibility period, and the beneficiary’s activities in the spring of 2002 would not be of concern in any petition filed after June 2004. The disqualifying issue in the present proceeding should not arise again if, in a future proceeding, the petitioner is prepared from the outset to provide a full and detailed accounting of the beneficiary’s activities during the relevant period, and to comply with requests for evidence rather than contest them.

ORDER: The motion is dismissed.