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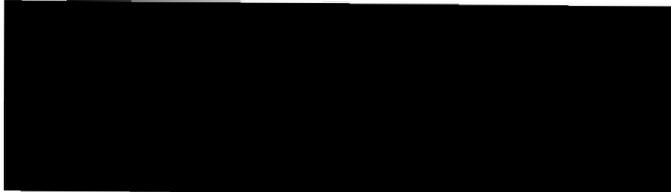
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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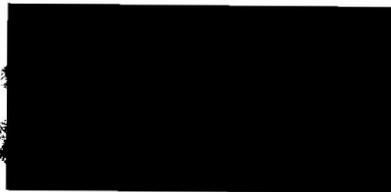


FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **AUG 29 2006**  
WAC 03 259 53430

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 the headquarters of the mission branch 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 denied the petition on numerous grounds. The AAO, in its appellate decision, withdrew part of the director's decision, but determined that discrepancies in the record prevented a finding that the petitioner has consistently been able to pay the beneficiary, or that the beneficiary had the requisite two years of continuous work experience immediately preceding the filing date of the petition.

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.<sup>1</sup>

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.

On motion, counsel states: "Prior to dismissal by the AAO, no notice was provided that continuity of religious vocation was being questioned on the basis of the Form W-2 amounts." This assertion is false. The director's decision of January 21, 2005 is divided into several sections. One section is headed "Discussion of Two Year Work Experience." In that section, the director stated: "given a rate of \$50 per week, Forms W-2 indicate the beneficiary worked approximately one week in 2000, 13 weeks in 2001, and 10 weeks in 2002. Therefore, the record suggests the beneficiary did not work continuously during 2000, 2001, or 2002." This passage unequivocally refutes counsel's claim, on motion, that the appellate decision marked the first time that the Forms W-2 were linked to the continuity of the beneficiary's service.

Counsel continues: "No request for weekly payroll records had been made by the CSC Director, nor should

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<sup>1</sup> 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).

employment records be determinative of the religious commitment of a member of the religious order.” In a request for evidence (RFE) issued September 23, 2003, the director instructed the petitioner to submit “evidence that shows monetary payment, such as pay stubs.” The director also requested copies of the beneficiary’s Forms W-2 in another section of the same notice. Because these two requests were separate, it is clear that the director wanted both the W-2s and additional “evidence that shows monetary payment.” The “pay stubs” example indicates a request for contemporaneous records, rather than merely an after-the-fact aggregate total of past payments. Thus, counsel’s assertion that the director made “[n]o request for weekly payroll records” is scarcely more persuasive than counsel’s demonstrably untrue claim that the director never linked the Forms W-2 to the continuity of the beneficiary’s work.

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 grounds for denial of this petition are not permanent bars to eligibility; rather, they apply 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 2003 would not be of concern in any petition filed after 2005, and calculation of ability to pay would begin at a later time as well. The grounds for denial in the present proceeding should not arise again if, in a future proceeding, the petitioner is prepared from the outset to provide a full, detailed and consistent accounting of the beneficiary’s activities during the relevant period, to compensate the beneficiary at the rate claimed, and to comply fully with requests for evidence.

**ORDER:** The motion is dismissed.