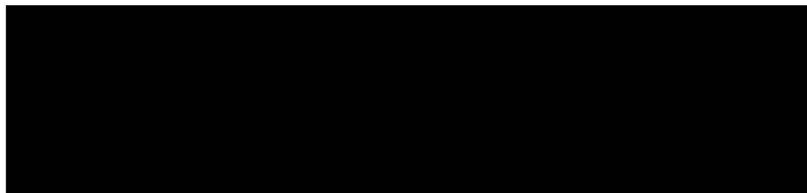


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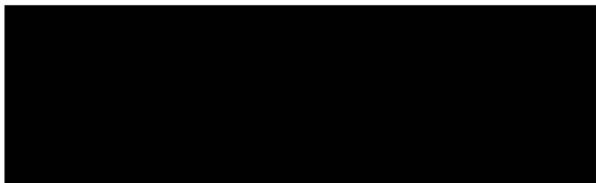
Petitioner:

Beneficiary:



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.

A handwritten signature in cursive script that reads "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed.

The petitioner is the mother church of the [REDACTED]. 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 [REDACTED]. The director determined that the petitioner had not established that: (1) the beneficiary is qualified for the position offered; (2) the beneficiary had the requisite two years of continuous work experience immediately preceding the filing date of the petition; (3) the beneficiary's position qualifies as a religious occupation; (4) the petitioner is able to provide for the beneficiary; or (5) the petitioner is a qualifying non-profit religious organization.

The AAO dismissed the appeal on February 3, 2006. In dismissing the appeal, the AAO found that the petitioner had overcome all the above grounds except (2), relating to continuity of religious work. The AAO affirmed the director's finding that the petitioner had not adequately established the beneficiary's continuous experience during the two-year qualifying period ending January 3, 2001, as 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 stated:

In an affidavit accompanying the petition, [REDACTED] a personnel resources director for the petitioner, states:

As is true for all Church staff members, the Church will provide [the beneficiary] with all food, clothing, transportation and health care. In addition, [the beneficiary] will receive a \$50.00 per week spending allowance. . . .

The petitioner's initial submission included no contemporaneous documentation of the beneficiary's work during the qualifying period; the petitioner submitted only statements asserting that such work took place. On February 20, 2001, the director instructed the petitioner to submit evidence of past employment. In response, the petitioner submits copies of Form W-2 Wage and Tax Statements indicating that the petitioner paid the beneficiary \$539.08 in 1997, \$1,760.08 in 1998, \$2,289.02 in 1999 and \$1,221.57 in 2000. Subsequently, the petitioner has submitted further Forms W-2 showing that the petitioner paid the beneficiary \$1,750.78 in 2001 and \$2,764.01 in 2002. . . .

The director approved the petition on July 27, 2001, but subsequently issued a notice of intent to revoke, based in part on a lack of evidence of the beneficiary's past experience and full membership in the Sea Org. The director observed: "although the petitioner indicated that the beneficiary was paid \$50 per week, or \$2,600 per year, for her services, IRS Forms W-2 submitted indicate the beneficiary was paid materially less than \$2,600 per year. The

petitioner has thus submitted no corroborating evidence that the beneficiary was indeed employed in [REDACTED] nor that she was employed full time.” . . .

In its response to the notice of intent to revoke, the petitioner has not addressed the director's comments regarding the low amounts shown on the beneficiary's Forms W-2. The petitioner has submitted a copy of a letter from Mr [REDACTED] indicating that the beneficiary “is given a weekly allowance of \$50.00.” This does not explain why the Forms W-2 show considerably less than \$50 per week; it amounts only to one more claim by the petitioner that does not appear to be consistent with the documentary evidence. . . .

The director revoked the approval of the petition on October 27, 2004, stating that . . . the Forms W-2 issued to the beneficiary do not reflect continuous payments to the beneficiary throughout the qualifying period. . . .

In a supplement to the appeal, the petitioner submits copies of church documents, including a document indicating that the beneficiary received a provisional Fitness Board certificate on January 13, 1994. Other materials show that the beneficiary remained a Sea Org member after the initial provisional period expired. This indicates that the beneficiary was a full member of the Sea Org for nearly seven years prior to the petition's January 2001 filing date. This does not, however, demonstrate the continuity of the beneficiary's religious work during the two-year qualifying period. Simply belonging to a religious order is not the same thing as carrying on a religious vocation.

The director advised the petitioner, in the notice of intent, that the low payments shown on the beneficiary's Forms W-2 call into question the continuity of the beneficiary's work. The petitioner's response did not address this issue. The director repeated the same finding in the notice of revocation, and once again the petitioner has failed to address the issue [on appeal]. While it is conceivable that a reasonable explanation exists for the shortfall in the petitioner's payments to the beneficiary, it is indisputable that the petitioner has failed to provide such an explanation despite repeated opportunities to do so.

Thus, the issue is not a definitive finding that the beneficiary's work was not continuous; rather, the issue is that the petitioner, on whom the burden of proof rests, failed to demonstrate that the work was continuous. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

On motion, the petitioner submits copies of pay records showing that the beneficiary received regular payments from January 1999 to January 2001. The records show that, for months at a time, the beneficiary's weekly payments were substantially less than \$50 per week, which contradicts claims by church officials that the beneficiary “is given a weekly allowance of \$50.00.”

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 A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). Here, the arguments presented on motion concern the accompanying evidence; to reconsider on the basis of those arguments would, in effect, turn the motion to reconsider into a backdoor motion to reopen. We will consider the arguments only insofar as they relate to counsel's assertions that the AAO should accept the new evidence.

The pay records are not "new" because they existed for years prior to the denial and dismissal. Counsel argues, on motion, that the director never specifically requested weekly payroll records. Rather, the director had more vaguely requested evidence of "monetary payment," which the petitioner had furnished as Forms W-2. This argument is not persuasive. The director, in the notice of intent to revoke, specifically tied the low amounts on the beneficiary's Forms W-2 to the question of the continuity of the beneficiary's work. The petitioner, at that time, had the opportunity to show that the amounts shown on the Forms W-2 were consistent with regular, albeit greatly reduced, payments. The petitioner did not take advantage of that opportunity. Instead, the petitioner proffered the false assertion that the beneficiary received regular \$50 payments (when in fact she often received less than \$10). The petitioner imposed no subsequent procedural obligations on the director or the AAO by forfeiting this opportunity.

On motion, the petitioner has not shown that the director erred given the evidence available to the director at the time, or that the AAO erred given the evidence available to the director at the time. The petitioner has now chosen, at this late stage in the proceedings, to provide evidence that affects a material issue, but it remains that the petitioner chose to withhold this evidence at a time when its submission may have affected the outcome of the initial decision or the appellate decision.

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. The motion to reopen does not exist merely as an opportunity for a petitioner to correct its negligent failure to submit evidence that it should have submitted previously, or to preserve indefinitely a desired earlier priority date.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. The petitioner has submitted no new evidence that has been shown to have been unavailable previously. Accordingly, the submission does not meet the requirements of a motion to reopen, and the motion must therefore be dismissed.

ORDER: The motion is 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).