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

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 29 2006

WAC 03 256 54719

IN RE: Petitioner:
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:

[redacted]

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.

Mari Johnson

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 granted, the AAO's previous decision will be affirmed and the petition will be denied.

The petitioner is the mother 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 director also questioned the authenticity and credibility of key documents reproduced in the record.

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 South Africa in 2003, despite prior requests from the director for documentation and detailed pay records relating to that period. The AAO concurred with the director's finding that, given demonstrably inaccurate statements provided by church officials in California, the assertions of those officials could not suffice as evidence of the beneficiary's activities. 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 letters from church officials, copies of previously submitted payroll records, copies of documents regarding the beneficiary's activities in South Africa, and information regarding South African nonimmigrant visa policy.

We shall not be considering all of the submitted evidence here. 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 payroll records are not "new" in that they were previously submitted and, in fact, the AAO specifically discussed those records in its prior decision. Telex transmissions that the petitioner sent to the beneficiary in California date from well before the filing date and thus are not new evidence. Similarly, the "Mission Summary Sheets" (which have been so heavily censored as to completely obscure their substantive content) have been in the petitioner's possession since before the filing date.

[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).

We note that, after filing the appeal, the petitioner requested numerous extensions of the time permitted to supplement the record on appeal. After several months of consecutive extensions, the AAO advised counsel on September 9, 2005 that the petitioner "is afforded 30 days from the date of this letter in which to submit briefs. . . . No extensions beyond this 30-day period will be granted." The AAO added that the petitioner had not shown good cause for these multiple extensions. The September 9, 2005 letter marked the petitioner's final opportunity to make substantive additions to the record of proceeding prior to AAO's decision based on that record.

In its November 23, 2005 dismissal notice, the AAO had 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). . . .
>
> We note that more than two years have elapsed since the beneficiary's last absence from the United States documented in the record, and therefore the issue of the beneficiary's absences from the United States would not be an issue in a newly filed petition, provided the beneficiary has remained at the petitioning facility in California (or the petitioner is able to document and account for absences).

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.

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 three months' 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 September 19, 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 12, 2001 and

ending September 12, 2003 only." Thus, the request was clearly tied, from the beginning, to the issue of continuous employment during the two-year qualifying period.

In the denial notice of December 30, 2004, under the heading "Discussion of Two Year Work Experience," the director stated: "The petitioner was advised that each experience letter must be written by an authorized official from the specific location at which the experience was gained," and that the petitioner's response to the notice did not include such evidence. 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 12, 2001 until September 12, 2003."

Considering the placement of the director's observations in the September 19, 2003 request for evidence and the December 30, 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 South Africa 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.

We limit our consideration on motion to the petitioner's rebuttal of a finding that did not appear until the AAO rendered its first decision. Specifically, the AAO stated:

> The record contains a partial copy of the beneficiary's passport. Stamps in the passport indicate that the beneficiary arrived in Johannesburg, South Africa, in May 2003 (the exact date is not fully legible), and departed on August 11 of that year, arriving the next day back in the United States. A Temporary Residence Permit affixed to the passport shows three categories: Visitor's Permit, Medical Permit, and Business Permit. The box "Visitor's Permit" has been checked. The form indicates "Change of purpose of entry is prohibited." Thus, the available documentation appears to indicate that the beneficiary traveled to South Africa as a tourist rather than on the official business of any employer.

Because this motion is the petitioner's first opportunity to address this finding, we will consider the petitioner's response on motion. Counsel condemns the AAO's finding as "speculation." The AAO essentially admitted as much by using the qualifying phrase "appears to indicate." Nevertheless, it remains that nothing in the beneficiary's passport indicated that he was traveling on church business. Counsel continues:

> If the AAO Director checked the website of the South African Department of Home Affairs, regarding the types of permits, it would have been confirmed that Australian nationals, such the beneficiary, are "totally exempt . . . and thus do not require visas for purposes for which a **visitor's permit** may be issued," and that "nationals who are exempt from the South African visa requirements are only **exempt for the purposes of** holiday, **business** and transit."

(Counsel's emphasis.) Whatever exemptions may apply to Australian nationals, it remains that the passport does contain a clearly labeled "Temporary Residence Permit." The AAO found that the passport does not show that the beneficiary was traveling on church business. Counsel's arguments do not rebut that finding.

The motion includes a printout from http://www.home-affairs.gov.za/temp_residence.asp, which states: "Foreigners who contemplate investment in the South African economy by establishing a business or by investing in an existing business in the Republic must apply for a business permit." If investment is the only purpose for a "Business Permit," then this would explain why the beneficiary did not hold a "Business Permit" when he traveled to South Africa; but this does not establish the purpose of his visit, it merely rules out one possible purpose. The same printout states: "international concerns with branches/affiliated companies in the Republic may from time to time decide to transfer existing personnel from a foreign branch to a branch in the Republic. As these employees will be key employees, they must apply for intra-company transfer work permits." The materials submitted are silent as to whether an international church, such as the church of Scientology, would be considered a "company" under this policy. Indeed, the web site materials submitted on motion do not mention religious workers at all. We are left, therefore, with the AAO's prior finding, which is essentially that the documents in the beneficiary's passport are not sufficient to demonstrate that he was traveling on church business.

The AAO did not, and does not now, issue a definitive finding that the beneficiary was not in South Africa on church business. Materials submitted on motion may, if timely submitted, have supported a finding that the beneficiary was, as claimed, visiting South Africa on behalf of the church. The key finding here is procedural rather than evidentiary; at issue is the petitioner's failure to provide such evidence when the director requested it. The director did not ask what church officials in California believed the beneficiary was doing; rather, the director requested evidence from the location where the claimed work took place. In response to this request, the petitioner neither provided such evidence nor adequately accounted for its failure to do so. 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).

We repeat, here, the AAO's prior observation 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 summer of 2003 would not be of concern in any petition filed after September 2004. The issues 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 AAO's decision of November 23, 2005 is affirmed. The petition is denied.