U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: JAN 10 2013 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The petitioner is a church. 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 minister. The AAO, in its August 11, 2011 dismissal, determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization. On September 9, 2011, the petitioner filed a motion to reopen and a motion to reconsider the AAO's decision. The AAO dismissed the motions on June 27, 2012, finding that the petitioner failed to meet the requirements of a motion to reopen or reconsider.

In dismissing the motion to reopen, the AAO discussed the petitioner's evidence, a letter from an accountant indicating that his firm had been retained by the petitioner to apply for recognition of tax exempt status under Section 501(c)(3) of the Internal Revenue Code. The AAO noted that the petitioner's recent application for recognition of tax exempt status is not relevant to the discussion of eligibility as the petitioner is required to establish that it met the requirements of a bona fide nonprofit religious organization as of the date of filing. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r. 1971). The AAO additionally found that the evidence submitted by the petitioner did not include any fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2), as the petitioner was previously put on notice of the requirements for eligibility by the regulations. Accordingly, the AAO found that the petitioner's evidence was not a proper basis for a motion to reopen. The AAO also noted that, on motion, the petitioner had again failed to submit evidence in compliance with the regulation at 8 C.F.R. § 204.5(m)(8).

Regarding the motion to reconsider, the AAO found that the petitioner failed to include specific allegations, supported by pertinent legal authority, as to how the AAO erred as a matter of fact or law in its prior decision.

Counsel for the petitioner filed the instant Form I-290B, Notice of Motion, on July 26, 2012 along with a brief from counsel and a copy of Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code. In an accompanying letter, counsel stated:

> Petitioner has received verbal confirmation from the IRS that it has been granted 501(c)(3) status. Written notification has been sent by the IRS and should be available within the next week. Said 501(c)(3) tax exempt status will be submitted to USCIS as soon as petitioner receives it. This official tax exempt notification confirms petitioner's tax exempt status from initial filing of the I-360.

On September 11, 2012, the AAO received a letter from counsel with an attached July 26, 2012 determination letter from the Internal Revenue Service (IRS), confirming the petitioner's tax exempt status, effective June 11, 2012.

The AAO notes that the regulation at 8 C.F.R. § 103.3(a)(2)(vii) allows for limited circumstances in which a petitioner can supplement an already-submitted appeal. This regulation, however, applies only to appeals, and not to motions to reopen or reconsider. There is no analogous regulation which allows a petitioner to submit new evidence in furtherance of a previously-filed motion. Similarly, the instructions to the Form I-290B provide that unlike appeals, motions may not be supplemented and specifically state that all evidence "must be submitted with the motion." 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.

On motion, the AAO will only consider arguments and evidence relating to the grounds underlying the AAO's most recent decision. The petitioner bears the burden of establishing that the AAO's June 27, 2012 decision to dismiss the motions was in error. If the petitioner demonstrated that the AAO erred by dismissing those motions, then there would be grounds to reopen the proceeding. The petitioner has not done so in this proceeding. The filing of a motion does not present a new opportunity as though the dismissal of the previous motion never existed. The petitioner has not shown that the AAO should not have dismissed the motions to reopen and reconsider, and the AAO will not, at this late date, consider the petitioner's untimely evidence regarding the underlying decisions to deny the petition and to dismiss the original appeal. Furthermore, the AAO notes that, even if considered, the evidence submitted by the petitioner of its recently recognized tax exempt status fails to demonstrate that it met the requirements of a bona fide nonprofit religious organization as of the date of filing.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. *See* 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] Counsel argues in her brief that the petitioner meets the eligibility requirements as a tax exempt religious organization, and submits evidence relating to this argument. However, counsel does not argue or provide any documentary evidence to demonstrate that the she met the requirements of a motion to reopen or reconsider in her September 9, 2011 filing, or that the AAO erroneously dismissed those motions. A review of counsel's brief and evidence on motion reveals no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2) and, therefore, cannot be considered a proper basis for a motion to reopen. Motions for the reopening of immigration proceedings are disfavored for the same reasons as are 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

[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).

seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the petitioner has not met that burden. The motion to reopen will be dismissed.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The motion to reopen is dismissed, the decision of the AAO dated June 27, 2012, is affirmed, and the petition remains denied.