(b)(6)

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

U.S. Citizenship and Immigration Services

Date: JUN 0 4 2013 Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: 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:

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) remanded the matter for a new decision. The director subsequently denied the petition a second time and certified the matter to the AAO for review. The AAO affirmed the denial of the petition. The matter is now 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 temple of the 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 priest. The director initially denied the petition on January 5, 2010, finding that an investigation had discredited some of the documentation submitted in support of the petition. On October 28, 2011, the AAO withdrew the director's decision, finding that the record did not show that any investigation had specifically discredited the petitioner's claims about the beneficiary's employment. The AAO remanded the matter, noting several evidentiary deficiencies that the director had not addressed in her decision. On March 28, 2012, the director again denied the petition, finding that the petitioner had not established that the beneficiary had the requisite two years of continuous, qualifying work experience immediately preceding the filing date of the petition. The director additionally found that the petitioner had not established how it intends to compensate the beneficiary. The AAO, in its October 3, 2012 dismissal, agreed with the director's determinations.

On motion, the petitioner submits a brief from counsel, copies of Form W-2 Wage and Tax Statements for the beneficiary for the years 2005, 2006, and 2007, a letter from board member of the petitioning temple, and a letter from the Internal Revenue Service (IRS) to the petitioner.

In the decision affirming the denial of the petition, the AAO specifically and thoroughly discussed the petitioner's evidence and determined that the petitioner had not established eligibility for the benefit sought, in part based on the petitioner's failure to establish that the beneficiary had the requisite two years of continuous qualifying work experience immediately preceding the filing of the petition. In response to the certified decision in which the director found that no evidence had been submitted to substantiate claims of past employment, former counsel for the petitioner asserted that the petitioner had "extensively documented" the beneficiary's experience, referring to a series of letters from various individuals attesting to the beneficiary's work experience and non-salaried compensation. The AAO noted that both it and the director had advised the petitioner that "it cannot suffice for the petitioner to submit letters from officials in the United States and/or abroad, claiming that the beneficiary worked during the qualifying period. Rather, the regulation at 8 C.F.R. § 204.5(m)(11) requires documentary evidence." The AAO found that the regulations specifically require IRS documentation of past compensation, including non-salaried compensation, and that the petitioner failed to submit documentary rather than testimonial evidence of the beneficiary's employment. The AAO additionally noted that, although the petitioner had submitted a certificate purportedly recognizing the beneficiary for "uninterrupted service and heroism to New Orleans

during and after Hurricane Katrina," officials of the petitioning temple stated in a February 4, 2010 affidavit and a January 23, 2012 letter that the temple was not in operation due to the hurricane between August 28, 2005 and November 2, 2005. The AAO found that the petitioner failed to resolve this inconsistency "by independent objective evidence," thereby calling into question the assertion regarding the beneficiary's continuous service during the hurricane and the continuity of the beneficiary's employment during the two-year period immediately preceding the filing of the petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In its decision, the AAO additionally agreed with the director's determination that the petitioner failed to establish its ability to compensate the beneficiary. The AAO cited the regulation at 8 C.F.R. § 204.5(m)(10) which sets forth the required evidence relating to compensation, and noted that both the AAO's October 2011 remand order and the director's November 2011 Request for Evidence (RFE) put the petitioner on notice of the regulation, including the requirement for IRS documentation or an explanation for its absence along with comparable, verifiable documentation. The AAO found that the petitioner had documented its ownership of the temple property including living quarters and kitchen facilities, and had submitted copies of financial statements. However, the AAO found that the petitioner had not met the specific regulatory demand for IRS documentation or an explanation for its absence.

A motion to reopen must state the new facts to be provided 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]

On motion, regarding the beneficiary's qualifying experience, counsel for the petitioner states the following:

> In addition to the affidavits and letters verifying employment in the United States, attached to this Motion are W-2's documenting beneficiary's employment in 2005 and 2006 at Petitioner's temple. (Exhibit 1) This evidence constitutes primary evidence under the regulations. This evidence was unavailable prior due to the fact that Petitioner mistakenly believed, based on its exemption status from income tax, that no W-2's had to be issued. Since the date of the last filing in this matter, Petitioner has restructured its management and all proper tax procedures and requirements have been adhered to and rectified.

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[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).

> Regarding beneficiary's employment in India, undersigned counsel has made a request to the proper foreign officials for comparable documentary evidence. This evidence was previously unavailable because the Petitioner did not use the proper avenues to obtain it. Petitioner mistakenly believed that the only information available to document the beneficiary's employment status [in] India was affidavits. Petitioner respectfully requests that it be allowed to submit this supplemental evidence for the record once it is received.

With regard to the inconsistency in the record relating to the continuity of the beneficiary's service, the petitioner submits an affidavit from a board member of the petitioning temple stating that, following Hurricane Katrina, the beneficiary continuously performed his duties "caring for the temple Deities" first at the petitioning temple for eight days and then at [redacted] Dallas temple for four months. The petitioner does not submit any "independent objective evidence" to support the claims made by the board member. Instead, counsel for the petitioner asserts that she has requested "primary evidence documenting the reimbursement between the New Orleans temple and Dallas temple for beneficiary's services," and requests that the petitioner be allowed to submit this evidence at a later date.

Regarding its ability to compensate the beneficiary, the petitioner submits copies of Form W-2 Wage and Tax Statements for the beneficiary for the years 2005, 2006, and 2007, stating that the beneficiary received $4,800 per year as "Housing Allowance."

A review of the evidence that the petitioner submits on motion reveals no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2). Although counsel refers to the submitted evidence as "previously unavailable," the AAO notes that the petitioner was previously put on notice of the requirement for documentary evidence of prior employment under 8 C.F.R. § 204.5(m)(11) and for IRS documentation or an explanation of its absence under 8 C.F.R. § 204.5(m)(10). Therefore, the petitioner could have procured and submitted the evidence prior to the adjudication of the petition or in response to the certified denial. The petitioner's motion is not an opportunity for the petitioner to correct defects in the record. Further, the petitioner acknowledges through counsel that the Forms W-2 submitted on motion were created "[s]ince the date of last filing in this matter." Like a delayed birth certificate, the newly issued Forms W-2 created several years after the fact raise questions regarding the truth of the facts asserted. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991)(discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings). Nor has the petitioner submitted documentation to establish that the forms were in fact filed with the IRS. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The petitioner's arguments on motion are not new facts and the evidence submitted on motion is not "new" and, therefore will not be considered a proper basis for a motion to reopen.

With regard to counsel's request that the petitioner be allowed to submit supplemental evidence regarding the beneficiary's employment abroad and his service at the Dallas temple, the AAO notes that no further evidence has been received to date. Regardless, such additional evidence would not

be considered. 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.

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 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 October 3, 2012, is affirmed, and the petition remains denied.