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

(b)(6)

[redacted]

DATE: JUL 2 5 2013 OFFICE: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The petitioner filed a motion to reopen and reconsider, which the director dismissed. The petitioner then appealed the matter to the AAO, which dismissed the appeal. The matter is now before the AAO on a motion to reopen. The AAO will dismiss the motion.

The petition describes the petitioner as an "Evangelical/Full Gospel/Baptist (original)" church. It seeks to classify the beneficiary as a nonimmigrant religious worker under section 101(a)(15)(R) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R), to perform services as an outreach pastor. The director determined that the petitioner failed to submit a required determination letter from the Internal Revenue Service (IRS) to verify the petitioner's tax-exempt status. The AAO subsequently determined that the petitioner had not established the beneficiary's denominational membership during the two years immediately prior to the filing of the petition.

Section 101(a)(15)(R) of the Act pertains to an alien who:

> (i) for the 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States; and
>
> (ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii).

Section 101(a)(27)(C)(ii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii), pertains to a nonimmigrant who seeks to enter the United States:

> (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
>
> (II) . . . in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
>
> (III) . . . in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(1) states that, to be approved for temporary admission to the United States, or extension and maintenance of status, for the purpose of conducting the activities of a religious worker for a period not to exceed five years, an alien must:

> (i) Be a member of a religious denomination having a bona fide non-profit religious organization in the United States for at least two years immediately preceding the time of application for admission;

(ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week);

(iii) Be coming solely as a minister or to perform a religious vocation or occupation as defined in paragraph (r)(3) of this section (in either a professional or nonprofessional capacity);

(iv) Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and

(v) Not work in the United States in any other capacity, except as provided in paragraph (r)(2) of this section.

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). 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 USCIS 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). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Section 101(a)(15)(R)(i) of the Act requires the petitioner to be a bona fide nonprofit, religious organization in the United States. Section 101(a)(27)(C)(ii) of the Act further specifies that the nonprofit organization must be exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986.

The USCIS regulation at 8 C.F.R. § 214.2(r)(9) requires the petitioner, if the petitioner is a church, to submit a currently valid determination letter from the IRS showing that the organization holds an individual tax exemption or is covered by a group exemption.

In the preamble to revised regulations published in 2008, USCIS explained why the regulations require submission of an IRS determination letter:

> Several commenters objected to the proposed requirement that petitioners must file a determination letter from the IRS of tax-exempt status under IRC section 501(c)(3), 26 U.S.C. 501(c)(3), with every petition. Commenters pointed out that the IRS does not require churches to request a determination letter to qualify for tax-exempt status. A designation that an organization is a "church" is sufficient to qualify for tax-exempt status. Although some churches choose to request a formal IRC section 501(c)(3) determination, they are not required to do so. . . .
>
> USCIS recognizes that the IRS does not require all churches to apply for a tax-exempt status determination letter, but has nevertheless retained that requirement in this final

> rule. . . . A requirement that petitioning churches submit a tax determination letter is a valuable fraud deterrent. An IRS determination letter represents verifiable documentation that the petitioner is a bona fide tax-exempt organization or part of a group exemption. Whether an organization qualifies for exemption from federal income taxation provides a simplified test of that organization's non-profit status.
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> Requiring submission of a determination letter will also benefit petitioning religious organizations. A determination letter provides a petitioning organization with the opportunity to submit exceptionally clear evidence that it is a bona fide organization.

73 Fed. Reg. 72276, 72279-80 (Nov. 26, 2008).

The petitioner filed the Form I-129 petition on February 23, 2012. The petition did not include the required IRS determination letter. The director issued a request for evidence (RFE) on April 5, 2012, instructing the petitioner to submit the letter and various other requested evidence. The director advised the petitioner: "Pursuant to 8 C.F.R. 103.2(b)(11) failure to submit ALL evidence requested at one time may result in the denial of your application" (emphasis in original). In response, counsel stated: "[the petitioner] is a church and is automatically considered tax exempt. There is no confirmation letter or determination letters issued by the IRS to confirm the church's exempt status." The petitioner submitted a letter from the IRS stating: "We have no record that you are recognized as exempt from Federal income tax under Internal Revenue Code section 501(a)," and confirming that "[c]hurches . . . are automatically considered tax exempt."

The director denied the petition on July 20, 2012, because the petitioner had not submitted an IRS determination letter as required by the regulation at 8 C.F.R. § 214.2(r)(9).

The petitioner filed a motion to reopen and reconsider on August 21, 2012. On motion, counsel acknowledged the reasons that USCIS provided for the determination letter requirement, but asserted that that the requirement "violates the Establishment Clause of the First Amendment." The petitioner submitted a letter from [redacted] of the financial services firm [redacted] stating that the firm "is presently preparing an IRS form 1023, *Application for Recognition of Exemption* for [the petitioner]. However, based on the current workload and anticipated length of time for approval this application is not likely to be approved for approved for six (6) to nine (9) months."

The director dismissed the motion on September 11, 2012, stating that the petitioner had established no new facts, and had failed to provide "a clear reason for reconsideration."

The petitioner appealed the director's decision on October 15, 2012, and subsequently submitted a supporting brief. Counsel asserted that the petitioner had provided a reason for reconsideration, by contesting the constitutionality of the determination letter requirement. On January 29, 2013, the AAO received a second supplement to the appeal, including a copy of a November 30, 2012 IRS determination letter issued to the petitioner.

The AAO dismissed the appeal on February 20, 2013, stating that the IRS and USCIS have different policies to serve different purposes. USCIS has no authority over what organizations the IRS considers to be tax-exempt, and the IRS does not control what evidence USCIS requires as evidence of tax exemption. Regarding the newly submitted IRS determination letter, the AAO stated:

> At issue here is whether the record before the director established that the petitioner was a tax-exempt organization. . . . [A]t the time the petition was filed, the petitioner submitted no evidence of a currently valid determination letter from the IRS. The petitioner also failed to submit the letter in response to the RFE. Accordingly, we find no error on the part of the director in determining that the petitioner failed to establish that it had a valid determination letter from the IRS at the time it filed the petition or at the time it responded to the RFE as required by 8 C.F.R. § 214.2(r)(9). The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. §§ 103.2(b)(1), (12). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978).

The petitioner filed the present motion on March 20, 2013. On motion, the petitioner submits another copy of the new IRS determination letter, and requests consideration of "new evidence which [was] not previously available. See Matter of Cerna, 20 I&N Dec. 399, 403 (BIA 1991)." Counsel does not quote the relevant portion of *Matter of Cerna*, but appears to refer to the passage that a motion to reopen "does not contest the correctness of (or simply request a reevaluation of) the prior decision on the previous factual record. Rather, a motion to reopen proceedings seeks to reopen proceedings so that new evidence can be presented and so that a new decision can be entered, normally after a further evidentiary hearing." *Id.* at 403. The AAO had cited and paraphrased this passage in its February 2013 appellate decision.

The same page of the *Cerna* decision – which was a denial of a motion to reopen – contains this passage: "we are not favorably disposed to the practice of waiting until the conclusion of the administrative appeal process to file a motion that seeks to offer additional evidence regarding the matter previously in issue." *Id.* The petitioner in this proceeding has done essentially that. Mirroring the regulations, the instructions to Form I-129 indicated that the petitioner must submit an IRS determination letter, and the director asked for that document again in the RFE. On both occasions, the petitioner failed to submit the letter. Only after the denial of the petition did the petitioner file IRS Form 1023 to apply for recognition as a tax-exempt organization.

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, USCIS will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988).

The petitioner now resubmits the same document on motion calling it "new evidence." The purpose of a motion to reopen is to allow the submission of evidence that was previously unavailable to the petitioner, not to give the petitioner another chance to submit evidence that was previously requested

but which the petitioner did not submit. It is true that the petitioner was not in possession of the letter before November 2012, but this is the result of the petitioner's own delay in obtaining it; there is no evident reason why the petitioner could not have filed IRS Form 1023 at an earlier date, as soon as it learned of the determination letter requirement.

USCIS disfavors motions for the reopening of immigration proceedings 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 petitioner has not met that burden.

For the above reasons, the petitioner's submission of the IRS determination letter is not grounds for reopening the petition.

DENOMINATIONAL MEMBERSHIP

Beyond the issue of the IRS determination letter, the AAO's February 2013 dismissal notice raised the issue of the beneficiary's denominational membership. Sections 101(a)(15)(R)(i) and 101(a)(27)(C)(ii)(I) of the Act, taken together, require the beneficiary to have been a member of the petitioner's religious denomination throughout the two years immediately preceding the filing of the petition. The regulation at 8 C.F.R. § 214.2(r)(3) includes the following pertinent definitions:

> *Denominational membership* means membership during at least the two-year period immediately preceding the filing date of the petition, in the same type of religious denomination as the United States religious organization where the alien will work.
>
> *Religious denomination* means a religious group or community of believers that is governed or administered under a common type of ecclesiastical government and includes one or more of the following:
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> (A) A recognized common creed or statement of faith shared among the denomination's members;
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> (B) A common form of worship;
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> (C) A common formal code of doctrine and discipline;
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> (D) Common religious services and ceremonies;
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> (E) Common established places of religious worship or religious congregations; or
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> (F) Comparable indicia of a bona fide religious denomination.

The director's decisions of July 2012 and September 2012 did not address the beneficiary's denominational membership. The AAO, in its February 2013 decision, stated:

> On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner stated that the beneficiary was currently in the United States pursuant to an R-1 visa to work for [redacted] . . .
>
> In Section 1, question 4 of the Form I-129 Supplement R, the petitioner stated:
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> > The churches in the Philippines and in the United States are all evangelical churches who believe that Jesus is the Savior and the only way to heaven. . . . [The petitioner] is no different. . . .
>
> With the petition, the petitioner submitted a copy of its belief statement and statements from churches with whom the beneficiary was associated from 1994 to 2006. It submitted no documentation from the [redacted]
>
> In response to the RFE, counsel again alleged that the petitioner belonged to a "community of Evangelicals" and that as a body, they share a similar faith, a "form of worship," common religious services, and established places of worship called "churches." Counsel stated that "[t]here is no formal affiliation between [redacted] and [the petitioner]. Both however, believe as its core creed the statements above." There is nothing in the record to support counsel's statement. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel's statements are reiterated in an undated letter signed by the petitioner's pastor, [redacted] The petitioner again submitted no other documentation to establish that it is of the same denomination as the [redacted] Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Furthermore, it submitted no evidence that the two organizations are governed or administered under a common type of ecclesiastical government, as provided by the regulation at 8 C.F.R. § 214.2(r)(3).
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> Accordingly, the petitioner has failed to establish that the beneficiary was a member of its religious denomination for two full years prior to the filing of the visa petition.

When the petitioner filed the motion from the AAO's decision, the petitioner did not submit any evidence to address the issue of the beneficiary's denominational membership. Instead, counsel stated: "Petitioner is requesting additional time to provide supporting documents from Pastors

knowledgeable in the field of Christian Evangelism, Evangelicals etc. . . . Petitioner will present documents before or by April 16, 2013." Counsel cited no statute, regulations or case law to establish that "supporting documents from Pastors" would suffice to establish the beneficiary's denominational membership.

The USCIS regulation at 8 C.F.R. § 103.3(a)(2)(vii) permits the petitioner to supplement an appeal after filing it, but there is no parallel provision for motions to reopen. The motion must, therefore, be complete at the time of filing. Form I-290B, Notice of Appeal or Motion, reflects this situation. Part 2 of that form instructs the petitioner to select one of six options, as follows:

A. ☐ I am filing an appeal. My brief and/or additional evidence is attached.
B. ☐ I am filing an appeal. My brief and/or additional evidence will be submitted to the AAO within 30 days.
C. ☐ I am filing an appeal. No supplemental brief and/or additional evidence will be submitted.
D. ☐ I am filing a motion to reopen a decision. My brief and/or additional evidence is attached.
E. ☐ I am filing a motion to reconsider a decision. My brief is attached.
F. ☐ I am filing a motion to reopen and a motion to reconsider a decision. My brief and/or additional evidence is attached.

Option B allows the petitioner to submit "additional evidence . . . within 30 days," whereas there is no corresponding option for a motion to reopen or reconsider. Even then, the record does not indicate that the petitioner submitted any supplement by counsel's self-imposed deadline of April 16, 2013.

The petitioner's eventual supplement to the motion includes a cover letter from counsel dated May 23, 2013, but the postmark on the envelope is May 28, 2013, five days later. The petitioner's supplement does not include "supporting documents from Pastors" as counsel had previously asserted. Counsel claimed to have been in contact with "the new Pastor of [redacted]" with unsuccessful attempts to follow up their initial conversation. As the AAO's decision of February 2013 already advised, counsel's assertions are not evidence in this proceeding.

The evidence that accompanied counsel's May 2013 letter consists of printouts from the World Wide Web, specifically the *Wikipedia* page on "Evangelicalism" and the *About.com* page on "Southern Baptist Church Beliefs and Practices." With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.[1] *See Lamilem Badasa v. Michael Mukasey,* 540 F.3d 909 (8th Cir. 2008).

[1] Online content from *Wikipedia* is subject to the following general disclaimer:

> WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required

Even then, the *Wikipedia* page, on its face, contradicts the claim that evangelicalism, as a movement, constitutes something resembling a single religious denomination. The submitted article contains numerous references to "evangelical denominations," indicating that the term "evangelical" refers not to a denomination, but to a class of denominations. Even that class contains several categories which, themselves, are subdivided into denominations. For instance, some evangelical churches – but not all of them – embrace Pentecostalism, and the *Wikipedia* article uses the plural noun "Pentecostal denominations."

The *About.com* printout, meanwhile, mentions "the Southern Baptist denomination," setting Southern Baptists apart as a denomination even from other types of Baptists. Even if the petitioner had timely submitted these materials on motion, they would not have overcome the finding that the petitioner failed to establish the beneficiary's denominational membership.

The AAO will dismiss the motion for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The motion is dismissed.

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to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on July 23, 2013, a copy of which is incorporated into the record of proceeding.