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U.S. Citizenship  
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Services

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AUG 15 2007

[REDACTED]

FILE:

SRC 05 210 52121

Office:

TEXAS SERVICE CENTER

Date:

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.

*Robert P. Wiemann*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas 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 dismissed.

The petitioner is identified as 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 pastor of missions. The director determined that the petitioner has not established that it is a qualifying tax-exempt religious organization. The AAO affirmed the director's decision and dismissed the appeal.

Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of Citizenship and Immigration Services where it is demonstrated that the delay was reasonable and was beyond the control of the petitioner. 8 C.F.R. § 103.5(a)(1)(i). 8 C.F.R. § 103.5a(b) allows an additional three days to account for service of the decision by mail. The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

Here, the AAO issued its prior decision on August 11, 2006. To be timely, a motion to reopen that decision should have been filed (*i.e.*, received at the Service Center) no later than September 13, 2006. Counsel dated the present motion September 13, 2006, the last possible day that it could have been timely filed, and mailed the motion that same day. The motion was delivered to the Service Center on September 15, 2006, two days after the deadline. Counsel does not attempt any explanation as to why the motion was not mailed until the last day of the response period, when there was no chance it could be delivered on time. Counsel has not shown that the delay was reasonable and beyond the control of the petitioner. This unexplained and unjustified late filing is, by itself, sufficient grounds for dismissal under 8 C.F.R. § 103.3(a)(1)(i).

Furthermore, 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). This evidence must accompany the filing of the motion itself. While 8 C.F.R. § 103.3(a)(2)(vii) permits petitioners to submit supplements to previously filed appeals, within certain limits, there exists no comparable provision in the regulations for a petitioner to supplement a previously filed motion. The filing of a motion to reopen does not grant the petitioner an open-ended period in which to supplement the record at will, and the subsequent submission of evidence outside of conditions contemplated by regulation does not compel its consideration.

We note that, while the regulations do not permit the late filing of an appeal for any reason, they do permit the late filing of a motion, as discussed above. Therefore, if necessary evidence to support a motion cannot be obtained during the 30-day filing period, the proper course of action would have been to defer filing the motion until such time as the evidence can be submitted with it. One could then assert that, because the evidence was submitted as soon as it became available to the petitioner, the delay was reasonable and beyond the control of the petitioner. Here, the evidence did not accompany the filing of the motion, and therefore the unsubstantiated filing did not meet the regulatory requirements for the filing of a motion to reopen. Filing a motion to reopen without supporting evidence is a second sufficient basis for dismissal of the motion.

Even if the regulations did permit the AAO to accept supplements to already-filed motions, which they do not, the "new evidence" consists of an Internal Revenue Service Form 1023 Application for Recognition of Exemption and supporting documents. As early as the director's request for evidence, issued August 2, 2005, the petitioner had been on notice to submit evidence including the Form 1023 and related documents. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The 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).

Where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Here, the petitioner did not even provide the documents on appeal, when it would already have been too late. The petitioner submitted the materials only as an impermissible supplement to an untimely motion. Under the circumstances, the AAO need not and does not consider the merits of the evidence submitted to supplement the motion.

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. With the current motion, the movant has not met that burden. For this additional reason, the motion to reopen will be dismissed.

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The present motion does not meet applicable requirements, and shall therefore be dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal.

**ORDER:** The motion is dismissed.