



U.S. Citizenship  
and Immigration  
Services

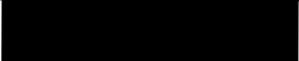
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JAN 24 2007

WAC 03 250 53915

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:

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, 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 and reconsider. The motion will be dismissed.

The petitioner is the mother church of the [REDACTED]. 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 [REDACTED]. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience immediately before the petition's filing date. Specifically, the petitioner had failed to provide evidence to account for the beneficiary's activities "from January 2002 until May 2002," during which time the petitioner had asserted that the beneficiary was on a religious mission in Australia. The director had specifically requested evidence from "an authorized official from the specific location at which the experience was gained."

The AAO dismissed the appeal on February 3, 2006. In dismissing the appeal, the AAO 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 noted that not only had the petitioner failed to produce evidence from Australia to account for the beneficiary's activities there, but also, the beneficiary's passport revealed that the beneficiary was not in Australia for at least part of the claimed period, and "the fragmentary evidence in the record does not account for the beneficiary's whereabouts during" that particular period of time. The AAO concurred with the director's finding that the assertions of church officials in California could not suffice as evidence of the beneficiary's activities overseas. 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).

On motion, the petitioner submits copies of pay records showing that the petitioner, in California, continued to issue nominal stipends to the beneficiary throughout the early months of 2002. The petitioner, having in the past argued vehemently that these payments are not a "wage" or "salary," is in a poor position to argue that these payments, issued in California, are *prima facie* evidence of qualifying religious work literally on the other side of the world. The petitioner also submits documents from 2002, relating to the beneficiary's activities in Australia.

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.<sup>1</sup> 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 Service 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). Here, the arguments presented on motion concern the accompanying evidence; to reconsider on the basis of those arguments would, in effect, turn the motion to reconsider into a backdoor

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<sup>1</sup> 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).

motion to reopen. We will consider the arguments only insofar as they relate to counsel's assertions that the AAO should accept the accompanying evidence.

The pay records and letters are not "new" because they existed for years prior to the denial and dismissal. When the director specifically requested letters from church officials at the locations where the beneficiary worked, *i.e.*, Australia, the petitioner did not submit these letters or even disclose their existence. Instead, counsel argued that the director had no right to request such evidence. These materials were evidently in the petitioner's possession all along, and the petitioner's decision to withhold them until this very late stage in the proceeding is not grounds for reopening that proceeding.

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 February 3, 2006 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 the beneficiary's absences from that facility).

Counsel argues that *Matter of Soriano* does not apply in this instance, because "[t]he CSC Director failed to articulate the latest concern, which is the basis of the AAO dismissal, that continuity of religious vocation throughout the two year qualifying period would be questioned due to four months' travel on a declared religious mission." 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 5, 2001 and ending September 5, 2003 only." Thus, the request was material and 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.

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 Australia 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 indicated.

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 in the face of a request for such evidence and at a time when its submission may have affected the outcome of the initial 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.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. The petitioner has submitted no new evidence that has been shown to have been unavailable when originally requested. Accordingly, the submission does not meet the requirements of a motion to reopen, and the motion must therefore be dismissed.

**ORDER:** The motion is dismissed.