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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

[REDACTED]

C1

Date: **AUG 09 2012** Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
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:

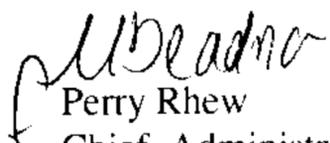
[REDACTED]

INSTRUCTIONS:

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,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition. On further review, the director determined that the beneficiary was not eligible for the visa preference classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke (NOIR) approval of the petition stating her reasons for doing so, and subsequently exercised her discretion to revoke approval of the petition on December 10, 2009. The Administrative Appeals Office (AAO) dismissed a subsequent appeal on December 20, 2011. 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 fellowship of the Assemblies of God. 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. The AAO, in its August 11, 2011 dismissal, determined that the petitioner failed to establish that the church where the beneficiary is to work operates as claimed in the petition and that the job offered to the beneficiary is full time and permanent employment. The AAO also determined that the petitioner failed to establish its ability to compensate the beneficiary and that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition.

On motion, the petitioner submits copies of financial statements for the year 2007 and a letter from the pastor of Immanuel Evangelical Lutheran Church dated June 30, 2009.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(iii) requires that the motion must be “[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding.” Furthermore, the regulation at 8 C.F.R. § 103.5(a)(4) requires that “[a] motion that does not meet applicable requirements shall be dismissed.” In this case, the petitioner failed to submit a statement regarding if the validity of the decision of the AAO has been or is subject of any judicial proceeding.

Notwithstanding the above, 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

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). The letter from Immanuel Evangelical Lutheran Church was previously submitted in response to the Notice of Intent to Revoke. Regarding the financial statements submitted on motion, the petitioner’s motion is not an opportunity for the petitioner to correct its own defects in the record. *Matter of Soriano* 19 I&N Dec. 764 (BIA 1988),

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).

held that a petitioner may be put on notice of evidentiary requirements by regulations, written notice such as a request for additional documentation or a notice of intent to deny, or an oral request at an interview. The petitioner was previously put on notice of the requirements for eligibility by the regulations. The evidence also could have been submitted on appeal as the director's decision specified that the petitioner had not established its ability to compensate the beneficiary. Therefore, the evidence submitted on motion will not be considered "new" and will not be considered a proper basis for a motion to reopen.

Moreover, the petitioner's motion fails to address any of the AAO's specific findings other than that the petitioner failed to establish its ability to compensate.

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 December 20, 2011, is affirmed, and the petition remains denied.