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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



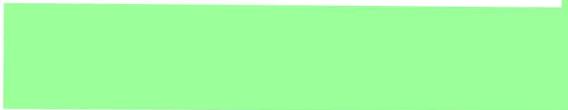
U.S. Citizenship  
and Immigration  
Services



Date: **FEB 04 2013** Office: CALIFORNIA SERVICE CENTER

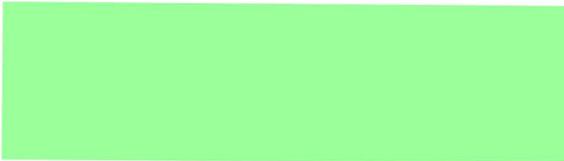


IN RE: Petitioner:  
Beneficiary:



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:

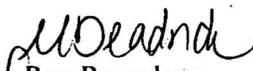


INSTRUCTIONS:

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) rejected a subsequent appeal as improperly filed and dismissed subsequent motions to reopen and to reconsider. The matter is now again 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 Buddhist temple. 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 priestess. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition.

On July 16, 2010, an appeal was filed seeking review of the director's decision. After reviewing the record, the AAO determined that the appeal was improperly filed as it was not filed by the petitioner or by any party with legal standing in the proceeding. Accordingly, the AAO rejected the appeal on February 28, 2012. On April 11, 2012, the petitioner filed motions seeking to reopen and reconsider the appeal that was rejected as improperly filed. The AAO noted that, as the appeal was rejected, there was no decision on the part of the AAO to be reopened or reconsidered. The AAO stated:

According to 8 C.F.R. § 103.5(a)(1)(ii), jurisdiction over a motion resides in the official who made the latest decision in the proceeding. The AAO did not enter a decision on this matter. Because the disputed decision was rendered by the director, the AAO has no jurisdiction over this motion and the motion must be rejected.

The AAO also found that the motions were untimely filed. Additionally, the AAO found that the petitioner failed to present any arguments or evidence that the AAO's rejection of the appeal for lack of standing was improper or erroneous and therefore failed to meet the requirements of a motion to reopen or reconsider. Accordingly, on August 22, 2012, the AAO issued a decision rejecting, or in the alternative, dismissing the motions.

Counsel for the petitioner filed the instant motion to reopen on September 21, 2012. On motion, counsel submits a brief and additional evidence. However, the submissions do not address the AAO's most recently issued decision. Rather, counsel's arguments and the submitted evidence relate to the eligibility issues discussed in the director's June 18, 2010 decision. On motion, the AAO will only consider arguments and evidence relating to the grounds underlying the AAO's most recent decision. The petitioner bears the burden of establishing that the AAO's August 22, 2012 dismissal of the petitioner's motions was itself in error. If the petitioner can demonstrate that the AAO erred by dismissing those motions, then there would be grounds to reopen or reconsider the proceeding. The petitioner has not done so in this proceeding. The filing of a motion does not present a new opportunity as though the dismissal of the previous motion never existed. The petitioner has not claimed or shown that its April 11, 2012 filing met the requirements of a

motion to reopen or a motion to reconsider, and the AAO will not, at this late date, entertain the petitioner's untimely arguments regarding the underlying decision to deny the petition.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. *See* 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> Counsel argues in his brief that the petitioner meets the eligibility requirements for classification as a special immigrant religious worker and submits additional evidence regarding his purported eligibility. However, counsel does not argue or provide any documentary evidence to demonstrate that the petitioner met the requirements of a motion to reopen or reconsider in its April 11, 2012 filing, or that the AAO erroneously dismissed those motions. A review of counsel's brief and evidence on motion reveals no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2) and, therefore, cannot be considered a proper basis for a motion to reopen. 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 August 22, 2012 is affirmed, and the petition remains denied.

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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).