(b)(6)

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 0 8 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:

SELF-REPRESENTED

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) dismissed a subsequent appeal. 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 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 senior pastor. The director discussed the negative findings of two site visits and determined that the petitioner failed to establish that it was a bona fide religious organization operating in the capacity claimed on the petition. The AAO, in its July 24, 2012 decision, agreed with the director's determination.

In dismissing the petitioner's appeal, the AAO thoroughly and specifically discussed the petitioner's evidence and found that the petitioner failed to meet its burden of proof by establishing that it was a bona fide nonprofit religious organization prior to and throughout the two-year qualifying period before the petition's filing date. Site visits were conducted on September 13, 2010 and November 11, 2010 at the petitioner's address and the address of the beneficiary's intended work location as listed on the Form I-360 petition. The director noted that the petitioner's address appeared to be a single family dwelling with no signs of religious activity and for sale signs on the property. The proposed work location was also listed for sale with no signage for the petitioning church. No one was present at either location on either of the site visit dates, so U.S. Citizenship and Immigration Services (USCIS) was unable to confirm the existence of the petitioning church. Regarding the petitioner's address, the petitioner argued on appeal that the address is not that of the church, but that of the beneficiary's home which is also used as a church office and which was for sale at the time but has since been taken off the market. The AAO noted that previously submitted evidence had indicated that the petitioner was operating its church at that location. Regarding the proposed work location, the petitioner asserted on appeal that it did operate a church at that location from April 2009 until June 2010, at which time is moved to a new location. The AAO noted that the petitioner failed to notify USCIS of any location change even though it responded to a Request for Evidence a month after the purported move to its new location. The AAO also found that the petitioner did not submit sufficient evidence to support its claims regarding its purported lease of church space during 2009 and 2010.

8 C.F.R. § 103.3(a)(1)(iii)(B) states that, for purposes of appeals, certifications, and reopening or reconsideration, "affected party" (in addition to USCIS) means the person or entity with legal standing in a proceeding. The USCIS regulation at 8 C.F.R. § 103.5(a)(1)(iii)(A) requires that a motion be signed by an affected party or the attorney or representative of record, and 8 C.F.R. § 103.5(a)(4) states that a motion that does not meet applicable requirements shall be dismissed.

Here, the party that signed the Form I-290B, Notice of Motion, was not the petitioner, but rather an attorney, indicated in a cover letter that she was submitting a Form G-28, Notice of Entry of Appearance as Attorney or Representative, signed by the petitioner. However, the submitted Form G-28 was signed only by the beneficiary, Because the beneficiary did not file the petition, he is not an affected party, and therefore

his attorney has no standing to file a motion on the petitioner's behalf. Accordingly, the motion does not meet the filing requirement at 8 C.F.R. § 103.5(a)(1)(iii)(A).

Notwithstanding the motion's improper filing, 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]

On motion, counsel attempts to clarify the timeframe of the petitioner's activities at various locations. In support of the motion, counsel submits additional evidence including affidavits, letters, lease agreements, utility bills, deed and mortgage documents, and other evidence related to the petitioner's purported operation at the beneficiary's home address and at the asserted leased church locations. 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). All of the evidence submitted on motion was previously available and could have been provided on appeal. The petitioner's motion is not an opportunity for the petitioner to correct its own defects in the record. Counsel's arguments on motion are not new facts and the evidence submitted on motion is not "new" and, therefore will not be considered a proper basis for a motion to reopen. The motion to reopen will be dismissed.

The AAO notes that on October 16, 2012, counsel submitted additional documentary evidence with a request to supplement the instant motion to reopen. The USCIS regulation at 8 C.F.R. § 103.3(a)(2)(vii) allows for limited circumstances in which a petitioner can supplement an already-submitted appeal. This regulation, however, applies only to appeals, and not to motions to reopen or reconsider. There is no analogous regulation which allows a petitioner to submit new evidence in furtherance of a previously-filed motion. Similarly, the instructions to the Form I-290B provide that unlike appeals, motions may not be supplemented and specifically state that all evidence "must be submitted with the motion." Pursuant to the regulation at 8 C.F.R. § 103.2(a)(1), every benefit request must be executed and filed in accordance with form instructions which are incorporated into the regulation. Accordingly, the additional evidence will not be considered. Regardless, as the additional evidence relates only to the petitioner's recent purchase of its own church property, it is not relevant to the question of whether the petitioner established that it was legitimately operating in the capacity stated in the petition during the periods in question.

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 July 24, 2012, is affirmed, and the petition remains denied.

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[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).