**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**

(b)(6)

Date: MAR 2 2 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) dismissed a subsequent appeal and a motion to reopen. 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 minister of education. The director denied the petition on March 15, 2010, finding that the petitioner had not established that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition. On April 15, 2010, the petitioner filed an appeal. The AAO summarily dismissed the petitioner's appeal on January 10, 2012, finding that the petitioner failed to specifically identify an erroneous conclusion of law or statement of fact in the director's decision as a basis for the appeal. The AAO noted that, although the petitioner asserted that it would submit a brief within 30 days, nothing further was received. On February 10, 2012, the petitioner filed a motion to reopen, asserting that it had sent a brief in support of the appeal but "no copies were made." The AAO dismissed the motion on June 21, 2012 noting that the petitioner submitted no documentary evidence in support of its assertion, and therefore failed to demonstrate that the decision to summarily dismiss the appeal was in error. The instant motion to reopen was filed on July 23, 2012.

In the instant motion, counsel for the petitioner claims ineffective assistance of counsel related to the former attorney for the petitioner and beneficiary, Counsel submits evidence pursuant to the requirements for a claim of ineffective assistance of counsel as set forth by the BIA in *Matter of Lozada,* 19 I&N Dec. 637 (BIA 1988). Specifically, counsel asserts that, but for the ineffective representation provided by a Form I-129, Petition for Nonimmigrant Worker, filed by the petitioner on the beneficiary's behalf on August 11, 2006 would have been approved and the beneficiary would have held lawful status and employment authorization throughout the qualifying period. However, although counsel submits documents related to a lawsuit and conviction of a former employee who worked at the organization with there is no evidence that was involved in that suit or has ever had any disciplinary proceedings against him. Moreover, the lawsuit and conviction do not appear to have any relation to the filing of immigration petitions. Regarding the requirements of an ineffective assistance of counsel claim as set forth in *Matter of Lozada*, the petitioner states that "due to the nature of our mission," it decided not to make a complaint to the Florida bar. Notably absent from the petitioner's claim is a detailed affidavit from the petitioner and/or the beneficiary providing the specific details of any agreements made with regarding what actions were to be taken and what representations he did or did not make to the petitioner and the beneficiary. Although the petitioner and beneficiary claim that they "relied totally on the expertise" of and accuse him of "sloppy lawyering," response to the petitioner's allegations in a similar matter, indicated that he was responsible only for "sign[ing] the initial petition" and that he left the firm in 2009.

Regardless, even if the ineffective representation claim were established, which it has not been, the claim does not relate to the AAO's most recently issued decision to dismiss the petitioner's motion to reopen. Instead, the ineffective assistance of counsel claim focuses on the issues contained in the director's March 15, 2010 decision. On motion, the AAO will only consider arguments and evidence relating to the grounds underlying the AAO's most recent decision. Accordingly, the AAO makes no finding regarding the claim of ineffective assistance of counsel as it relates to the director's denial of the Form I-360 petition or the Form I-129 petition. The petitioner bears the burden of establishing that the AAO's dismissal of the petitioner's motion to reopen was itself in error. If the petitioner demonstrated that the AAO erred by dismissing that motion, then there would be grounds to reopen. The petitioner has not done so in this proceeding. The filing of a motion does not present a new opportunity as though the summary dismissal never existed. The petitioner was self-represented in its filing of both the February 10, 2012 motion to reopen and the April 15, 2010 appeal. The petitioner has not shown that the AAO should not have dismissed the motion to reopen, and the AAO will not, at this late date, consider the petitioner's untimely evidence regarding the underlying decisions 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.[1] On motion, counsel submits evidence relating to the purported ineffective assistance of former counsel. However, counsel does not argue or provide any documentary evidence to demonstrate that the petitioner met the requirements of a motion to reopen with its February 10, 2012 filing or that its failure to do so was due to the ineffective assistance of Accordingly, the petitioner has not established 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 June 21, 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).