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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: **SEP 09 2013** 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The AAO rejected the petitioner's appeal as untimely, and then dismissed a motion to reopen and reconsider. The matter is now before the AAO on a motion to reopen. The AAO will dismiss the motion.

The petitioner is a Thai 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 monk. The petitioner filed the Form I-360 petition on September 15, 2009. The director denied the petition on July 20, 2010, having determined that the petitioner failed: (1) to establish that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition; (2) to submit required evidence of its tax-exempt status; and (3) to successfully complete a compliance review site visit.

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). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The director's denial notice instructed the petitioner not to file an appeal directly with the AAO. Nevertheless, the petitioner sent its appeal directly to the AAO, which cannot accept direct filings of appeals or motions. The receipt date is the date that the submission arrives at the proper location for filing. *See* 8 C.F.R. § 103.2(a)(7)(i). On April 19, 2012, the AAO rejected the appeal as untimely, as required by the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

The petitioner then attempted to file a motion to reopen and reconsider. Prior correspondence from counsel acknowledged the instruction not to file Form I-290B, Notice of Appeal or Motion, directly with the AAO. The petitioner nevertheless sent the motion, on Form I-290B, directly to the AAO as before. The AAO dismissed the motion on December 18, 2012, because the motion was untimely and because it did not meet the regulatory requirements of a motion to reopen or a motion to reconsider. *See* 8 C.F.R. §§ 103.5(a)(1) through (4).

The petitioner has now filed a motion to reopen. As quoted above and in prior decisions, the USCIS regulation at 8 C.F.R. § 103.5(a)(2) requires that the petitioner's motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. The regulation at 8 C.F.R. § 103.5(a)(4) requires the dismissal of a motion that does not meet that standard. In its December 2012 decision, the AAO stated: "The petitioner's motion is not an opportunity for the petitioner to correct its own defects in the record."

On motion, counsel states:

In support of this motion, counsel submits an affidavit explaining the untimely filing of the appeal and that denying this motion subjects the petitioner (and especially the beneficiary) to undue har[d]ship through no fault of their own.

Counsel's prior attempts to reopen this matter focused on ambiguity in the forms and/or instructions for late filing the I-290[B]. At this point, counsel humbly accepts responsibility for the late filing and requests a discretionary benefit from the Service to give the petitioner and the beneficiary a chance to present their case.

In an accompanying affidavit, counsel discusses elements from the procedural history and states: "through a series of mistakes and misunderstanding, we filed [the appeal] with the wrong office. . . . We feel terrible about the situation." Counsel states that his "failure to understand the administrative process of filing an appeal" should not deprive "the petitioner and the beneficiary the opportunity to be heard, based on the merits of their case."

The present motion does not state any new facts to be proved in the reopened proceeding. Counsel's affidavit offers explanations but no new facts. Therefore, the motion, on its face, fails to meet the requirements of a motion to reopen and must be dismissed.

The latest filing resembles not a motion to reopen, but rather a motion to reconsider. Rather than introduce new facts, counsel contends that the AAO should have made a different decision based on the record available to it at the time. A motion to reconsider contests the correctness of the original decision based on the previous factual record. *See Matter of Cerna*, 20 I&N Dec. 399, 403 (BIA 1991).

Although the petitioner did not designate the latest filing as a motion to reconsider, counsel's most substantive assertion on motion concerns an application of law or U.S. Citizenship and Immigration Services (USCIS) policy. Specifically, in referring to acceptance of a late motion to reopen as "a discretionary benefit," counsel cites the following regulatory clause from 8 C.F.R. § 103.5(a)(1):

Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

Counsel states that the late filing of the previous motion was his fault, not that of the petitioner, and therefore USCIS should excuse the late filing of the previous motion. The cited clause, however, does not exist in order to allow petitioners to file untimely appeals provided that an attorney acted as an intermediary. A motion to reopen seeks a new hearing based on new or previously unavailable evidence. *See Matter of Cerna*, 20 I&N Dec. 403. The provision for late filing of a motion to reopen, therefore, accommodates situations in which pertinent new evidence does not become available until after the expiration of the filing period. Counsel acts, in effect, as a proxy for the petitioner, and as such counsel's actions are not beyond the petitioner's control. Rather, in the legal sense, counsel's actions are effectively the petitioner's actions.

USCIS will, under some circumstances, entertain motions to reopen based on ineffective assistance of counsel. Any appeal or motion based upon a claim of ineffective assistance of counsel requires:

(1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).

In this instance, it is counsel who makes the allegation against himself. In that event, steps (1) and (2) above are, arguably, moot – the petitioner need not describe counsel's actions or allow counsel an opportunity to respond, because the allegations come from counsel. Counsel, however, cannot forestall or sidestep the third prong of the *Lozada* test – notice to disciplinary authorities – simply by acknowledging error and expressing regret. Therefore, counsel's statement on appeal does not meet the *Lozada* test for a motion to reopen.

The petitioner has not filed a motion to reconsider, and the petitioner's filing does not set forth new facts as required for a motion to reopen. The regulation at 8 C.F.R. § 103.5(a)(4) therefore requires dismissal of the motion.

The above procedural issues aside, review of the record shows that the petitioner would not have prevailed on the merits. Consideration of the appeal on its merits would have resulted in dismissal of the appeal.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
- (ii) seeks to enter the United States—
 - (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
 - (II) before September 30, 2015, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
 - (III) before September 30, 2015, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the

Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

TWO YEARS EXPERIENCE

The first stated ground for denial of the petition concerns the beneficiary's qualifying experience. The USCIS regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary has been working as a minister or in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously for at least the two-year period immediately preceding the filing of the petition. The USCIS regulation at 8 C.F.R. § 204.5(m)(11) states that qualifying prior experience, if acquired in the United States, must have been authorized under United States immigration law.

The record shows that the beneficiary entered the United States as a B-2 nonimmigrant visitor for pleasure on April 24, 2008. The petitioner indicated that the beneficiary had resided at the petitioning temple ever since he arrived in the United States. A B-2 nonimmigrant may not engage in any employment in the United States. *See* 8 C.F.R. § 214.1(e). The petitioner filed a nonimmigrant petition to classify the beneficiary as an R-1 nonimmigrant religious worker. USCIS ultimately approved that petition, granting the beneficiary R-1 nonimmigrant status, but that status did not take effect until September 22, 2009, a week after the petition's filing date. Therefore, the beneficiary was in the United States, with no authorization to perform qualifying religious work, for nearly 17 months of the 24-month qualifying period.

In an August 29, 2009 letter submitted with the petition, [REDACTED] abbot of the petitioning temple, stated: "Consistent with the custom in Thai Buddhism, [the beneficiary] will receive no salary but be supported by our temple in all living and travel expenses."

Subsequently, after the director discussed the results of an unannounced April 28, 2008 site inspection of the petitioning temple, [REDACTED] responded with a letter dated June 16, 2010, in which he stated:

[Y]our findings do not address the actual activities of [the beneficiary] when the investigator appeared without advance notice. The report should reflect that he was doing temple work. . . .

We have not employed anybody without authorization. . . . Occasionally, we have visiting monks and other religious-minded people who come and stay at our temple. . . . [The beneficiary] was indeed a visitor at our temple before we filed the [R-1 nonimmigrant] visa application [on his behalf]. . . .

Before requesting his R-1 [nonimmigrant status], we did not pay wages to [the beneficiary]. However, he did stay at the temple as a guest. As such, he shared our food and slept in the temple with the other monks.

[REDACTED] 2010 statement that the petitioner “did not pay wages to [the beneficiary]” is probably true, but irrelevant because the abbot also asserted that Thai Buddhist monks “receive no salary” regardless of their immigration status. Thus, [REDACTED] asserted that the beneficiary “was doing temple work” in late April 2008, days after his arrival in the United States, while receiving room and board, which appears to be the standard compensation of a Thai Buddhist monk.

The petitioner also submitted a “Work history” indicating that the beneficiary has “[w]orked as a Buddhist monk 24 hours a day, 7 days a week” from “25 April 2008 until now” at the petitioning temple.

In the July 20, 2010 denial notice, the director stated: “the beneficiary did not perform religious work in lawful immigration status as a religious worker . . . from April 24, 2008 to September 21, 2009.” The director also stated that the petitioner “claimed that the beneficiary was doing temple work at the time of the unannounced site investigation” on April 28, 2008, and that “the room and board provided to the beneficiary is considered compensation which is equivalent to the Monk pay.”

On appeal, counsel stated that the beneficiary entered the United States as a B-1/B-2 nonimmigrant, and that participation in a “voluntary service program” entitled him to status as a B-1 nonimmigrant for business. USCIS records, however, show that USCIS admitted the beneficiary as a B-2 nonimmigrant, not as a B-1 nonimmigrant. There is no evidence that the beneficiary received, or even sought, a change of status. Even then, the petitioner has not shown that the beneficiary has participated in a voluntary service program.

USCIS regulations are silent regarding B-1 nonimmigrants in voluntary service programs. The Department of State’s Foreign Affairs Manual includes the following provisions, which counsel quoted on appeal:

9 FAM 41.31 N9.1-5 Participants in Voluntary Service Programs

- a. Aliens participating in a voluntary service program benefiting U.S. local communities, who establish that they are members of, and have a commitment to, a particular recognized religious or nonprofit charitable organization. No salary or remuneration should be paid from a U.S. source, other than an allowance or other reimbursement for expenses incidental to the volunteers’ stay in the United States.
- b. A “voluntary service program” is an organized project conducted by a recognized religious or nonprofit charitable organization to assist the poor or the needy or to further a religious or charitable cause. The program may not, however, involve the selling of articles and/or the solicitation and acceptance

of donations. The burden that the voluntary program meets the Department of Homeland Security (DHS) definition of “voluntary service program” is placed upon the recognized religious or nonprofit charitable organization, which must also meet other criteria set out in the DHS Operating Instructions with regard to voluntary workers.

c. You must assure that the written statement issued by the sponsoring organization is attached to the passport containing the visa for presentation to the DHS officer at the port of entry. The written statement will be furnished by the alien participating in a service program sponsored by the religious or nonprofit charitable organization and must contain DHS required information such as the:

- (1) Volunteer’s name and date and place of birth;
- (2) Volunteer’s foreign permanent residence address;
- (3) Name and address of initial destination in the United States; and
- (4) Volunteer’s anticipated duration of assignment.

Counsel quoted the above requirements, but the petitioner submitted no evidence that the beneficiary entered the United States to participate in a qualifying voluntary service program. The petitioner, for instance, did not furnish a copy of “the written statement issued by the sponsoring organization” described above. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel, on appeal, contended that every Buddhist monk serves in a voluntary service program: “when the beneficiary entered the United States the beneficiary wished to serve at a voluntary service program because the beneficiary wanted to become a monk at [the petitioning temple].” Counsel asserted that the activities at the temple “are considered voluntary service programs because the beneficiary was not paid for his services.” The petitioner provided no evidence, and cited no authority, to show that a Buddhist temple is inherently a qualifying voluntary service program, or that a Buddhist monk is automatically considered to be a participant in such a program. The quoted portion of the Foreign Affairs Manual states: “The burden that the voluntary program meets the Department of Homeland Security (DHS) definition of ‘voluntary service program’ is placed upon the recognized religious or nonprofit charitable organization.” The petitioner has not met that burden.

As noted previously, [REDACTED] stated in his June 16, 2010 letter that, before attaining R-1 nonimmigrant status, the beneficiary “was doing temple work” and “shared [the petitioner’s] food and slept in the temple with the other monks.” The Board of Immigration Appeals ruled that an alien who “receives compensation in return for his efforts on behalf of the Church” is “employed” for immigration purposes, even if that compensation takes the form of material support rather than a cash wage. See *Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982). If the beneficiary performed

work for the temple in exchange for food and lodging, then the temple “employed” him. The petitioner made no claim that the beneficiary participated in a qualifying voluntary service program until after the director denied the petition.

For the above reasons, there is no evidence that the beneficiary entered the United States as a B-1 nonimmigrant to participate in a voluntary service program. That claim did not surface until the filing of the appeal, more than two years after the beneficiary entered the United States.

The petitioner has not established that the beneficiary meets the requirement of two years of continuous, authorized experience immediately preceding the petition’s filing date. Therefore, the petitioner would not have prevailed on this point on appeal.

TAX EXEMPT STATUS

The second stated ground for denial concerns the petitioner’s tax-exempt status. The USCIS regulation at 8 C.F.R. § 204.5(m)(8)(i) requires the petitioner to submit a currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code.

The petitioner’s initial submission included copies of its articles of incorporation and its 2008 IRS Form 990-EZ Return of Organization Exempt From Income Tax. The petitioner did not, however, submit the required copy of an IRS determination letter.

On May 19, 2010, the director issued a notice of intent to deny the petition, citing various evidentiary deficiencies. The director stated that the record “lacks a letter from the Internal Revenue Service (‘IRS’) showing that the organization is exempt from taxation,” and instructed the petitioner to submit a copy of such a letter. Thus, the director demonstrably served notice of this specific deficiency.

The petitioner’s response does not include a copy of an IRS determination letter. Counsel’s cover letter, which includes a list of submitted exhibits, did not mention the letter, account for its absence, or even acknowledge the director’s request. Similarly, [REDACTED]’s accompanying letter of June 16, 2010 addressed several elements of the notice of intent to deny, but did not address the issue of the required IRS determination letter.

In the denial notice, the director stated that the petitioner failed to submit a copy of the required IRS determination letter. On appeal, the petitioner submitted a copy of an IRS determination letter, issued to the petitioner on August 29, 1994.

The director put the petitioner on notice of required evidence and gave the petitioner a reasonable opportunity to submit it before the director issued the decision. The petitioner failed to submit the requested evidence at that time, submitting only later on appeal. At the time the director denied the petition, the director correctly found that the petitioner had not submitted the required documentation. See *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*,

19 I&N Dec. 533, 537 (BIA 1988). The 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). Based on the record as it was constituted before the director, the director acted properly by denying the petition. The petitioner cannot now overcome the denial by submitting evidence that it failed to submit earlier, after specific instructions to do so. Therefore, even if the petitioner had properly filed the appeal, the petitioner would not have prevailed on this point.

COMPLIANCE REVIEW

The third and final stated ground for denial concerned the compliance review process. The USCIS regulation at 8 C.F.R. § 204.5(m)(12) states:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

In the May 19, 2010 notice of intent to deny the petition, the director stated:

An unannounced site visit was conducted on April 28, 2008. . . .

The petitioner misrepresented the number of [members of the] congregation so as to justify unneeded Monk hiring. The petitioner verbally reported that Thai nationals were doing a certain job and then filed petitions reporting that they would hold a different job title. The petitioner was suspected of providing room and board to various B2 Thai nationals. The investigator was told that one of them did not reside or work at the site, but the individual's California Driver License referenced a residence [at] the petitioner's address. . . .

The number of [members of the] congregation is provided as 665 on Form I-360. The number was even fluffed to 1000 on one of the petitions that the petitioner previously filed. The physical site in which the petitioner is located is actually a three bedroom house that has been converted so as to accommodate religious service. The Attorney of Record submitted a statement detailing that the actual number that regularly attends service is only approximately 50. The petitioner apparently fluctuated the number in an attempt to justify the need [to petition for] so many Monks. Also, no

religious work was verified [for] several R-1 workers. The petitioner appeared to be providing unauthorized room and board to Monks [for whom] the petitioner had not filed petitions. . . . The petitioner is suspected to be facilitating the fraudulent filing of several R-1 petitions. According to the USCIS system, the petitioner's address is linked to 19 R-1 filings from 1997 to 2008. The petitioner filed petitions [on] behalf of the brother of the signatory of the petition and [on] behalf of mere members of the organization. Hiring such a high number of religious workers compared to the actual number of [members of the] congregation indicates fraudulent hiring. Thus, the site visit was deemed unsuccessful and the petitioner failed the compliance review verification.

In response to the notice, [REDACTED] stated:

I would like to think that my English skills are adequate, but apparently I was not able to express myself in a way that would help the investigator understand the truth. . . . I [previously] provided a list of our membership to show you how many people we serve. I also sent documentation and specific details regarding the immigration status of monks at our temple. And finally, I have also tried to provide evidence of the many programs and classes that we provide to those who are seeking religious community and spiritual enlightenment.

Presently, I am providing you with numerous photos of [the beneficiary] which show him performing a wide range of religious duties in a variety of settings. I also provide several letters from members of our temple community who are close to [the beneficiary] and who attest to the devoted and caring nature of this man. . . .

Perhaps most importantly, your findings do not address the actual activities of [the beneficiary] when the investigator appeared without advance notice. The report should reflect that he was doing temple work.

In denying the petition, the director provided additional details regarding the compliance review, stating, for example, that the petitioner had identified one individual as "simply a member" of the congregation, but filed a petition stating that the individual was a "religious cook."

On appeal, counsel stated: "the petitioner is justified in hiring the amount of monks it currently has. It is possible for members to live outside of the Bay Area and even in another state." The site inspection findings, however, went well beyond the issue of the size of the congregation. The petitioner offered no rebuttal regarding specific discrepancies that the director had identified. Instead, counsel stated: "nowhere in the statute, does it state that CIS can conduct an unannounced inspection. . . . In the end, CIS has grossly overstepped the bounds of the statute by acting in a secret manner in an attempt to inspect the premises."

The regulation at 8 C.F.R. § 204.5(m)(12), which counsel's appellate statement quoted in full, permits compliance review through "any means determined appropriate by USCIS." Counsel

identified no authority that limits USCIS's ability to conduct unannounced site inspections, or requires USCIS to give advance notice of such inspections.

The preamble to the final rule that implemented the regulation included the following passage:

On-site inspections are a useful tool to verify the legitimacy of information contained in applications and petitions, the continued eligibility for a benefit, and the legitimacy of petitioners. Therefore, this rule does not modify the proposed regulations pertaining to on-site inspections. If an on-site inspection yields derogatory information not known to the petitioner, USCIS will issue a Notice of Intent to Deny (NOID) the petition. See 8 CFR 103.2(b)(16). The petitioner may then submit additional documentation that may rebut the derogatory evidence. In addition, a denial of a petition may be appealed to the USCIS Administrative Appeals Office. See 8 CFR 204.5(n)(2) and 214.2(r)(13).

73 Fed. Reg. 72276, 72283 (Nov. 26, 2008). To require advance notice of on-site inspections would significantly reduce the usefulness of such inspections as a means to detect fraud. [REDACTED] essentially acknowledged as much when, in his July 16, 2010 letter, he stated: "As this was an unannounced visit from the USCIS, I cannot imagine how we would have planned anything." Furthermore, the information quoted above indicates that the petitioner has recourse when the director uses site visit information as a basis for denial. The director must issue notice of the derogatory information (and did, in this instance), and the petitioner can (as here) appeal an adverse decision.

Absent a rebuttal of the director's findings, the ground for denial would stand. The petitioner has not successfully completed compliance review. Therefore, under the regulation at 8 C.F.R. § 204.5(m)(12), USCIS cannot properly approve the petition.

The petitioner's latest filing does not meet the requirements of a motion to reopen, and the regulation at 8 C.F.R. § 103.5(a)(4) requires the AAO to dismiss the motion. Even if the requirements for a motion had been satisfied, the appeal would still have been dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The motion is dismissed.