



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

Date: **DEC 18 2012** Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(R)(1)

ON BEHALF OF PETITIONER:

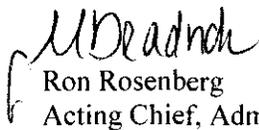
[REDACTED]

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,

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be dismissed.

The petitioner is a Buddhist temple and community organization. It seeks to classify the beneficiary as a nonimmigrant religious worker under section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1), to perform services as a monk. The AAO affirmed the director's decision that the petitioner had failed to establish how it intends to compensate the beneficiary.

On motion, counsel asserts that the petitioner "misunderstood what documentation and information was being requested" and that the "misunderstanding was cultural in nature." The petitioner submits additional documentation in support of the motion.

In its decision, the AAO found that the petitioner had failed to submit verifiable documentation of the non-salaried compensation that it stated it would provide to the beneficiary. Specifically, the petitioner alleged that it would provide the beneficiary with food, shelter and other living expenses. However, the petitioner submitted no verifiable documentary evidence of the "shelter" and living expenses that it would provide as compensation to the beneficiary. On motion, the petitioner submits photographs of the temple, including the living quarters and dining rooms for its monks.

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.<sup>1</sup> The petitioner has submitted no documentation, and does not argue, that the photographs submitted in support on motion were not available or could not have been presented during the previous proceeding. Counsel alleges that the petitioner's failure to submit the required documentation was the result of a cultural misunderstanding. The record, however, contains no documentation to support counsel's assertion. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

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.

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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 NEW COLLEGE DICTIONARY, (3d Ed 2008). (Emphasis in original).

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 April 23, 2012 is affirmed, and the petition remains denied.