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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**



813

Date: **MAY 09 2012**

Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE: Petitioner:
Beneficiary:



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

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
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.

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

The petitioner seeks to classify the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as a pastor. The director determined that the petitioner had not established that it qualifies as a bona fide nonprofit religious organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code (IRC) and that the beneficiary “will work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation . . . at the request of the organization in a religious [vocation] or occupation.” The AAO affirmed the director’s decision on appeal and additionally found that the petitioner had not established how it intends to compensate the beneficiary and had not provided the attestation required by the regulation at 8 C.F.R. § 214.2(r)(8).

On motion, counsel asserts, as she did on appeal, that there was an “unfortunate misunderstanding and clerical error . . . [in] the original petition filed with USCIS [U.S. Citizenship and Immigration Services].” The petitioner submits additional documentation in support of the motion.

On its Form I-129, Petition for a Nonimmigrant Worker, filed on November 20, 2006, the petitioner listed its address as [REDACTED]. When an immigration officer visited the premises on September 26, 2007, he found no existence of the petitioner at that address and was advised by the manager of a neighboring business that the petitioner had not been at that location for the past two years.

In a November 3, 2010 statement, the petitioner’s pastor, [REDACTED] states that the petitioning organization “provides missionary services and community services for families in need in the local community as well as outside the local area and abroad.” [REDACTED] states that because of her age and health problems, the organization “began moving operations of the ministry from its prior address of [REDACTED] to my residential address in approximately December 2004. . . . [The petitioner] continues to conduct the same community and missionary services it had at the previous address.” The petitioner provides photographs of activities at what appears to be a warehouse and which depict pallets of goods, a forklift, and trucks. The petitioner does not explain how these same activities can and are operated out of [REDACTED] residence. While [REDACTED] acknowledges using an outdated address on the petition, she attributes the error to prior counsel. She does not explain how prior counsel would have used the old address if it was not provided to him by the petitioner.

Counsel states that the petitioner's evidence on motion included the attestation required by the regulation at 8 C.F.R. § 214.2(r)(8) and evidence of how the petitioner intends to compensate the beneficiary. The sworn statement provided by [REDACTED] without additional supporting documentation, does not meet the requirements of 8 C.F.R. § 214.2(r)(11).

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

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). The petitioner submits a statement from the petitioner's pastor and photographs of activities at the petitioner's previous location. The petitioner submits no documentation that could not have been produced during the initial stages of this proceeding or on appeal. The petitioner's motion is not an opportunity for the petitioner to correct its own defects in the record.

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 October 7, 2010 is affirmed, and the petition remains denied.

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