

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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



D13

Date: **SEP 18 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, 8 U.S.C. § 1101(a)(15)(R)(1)

ON BEHALF OF PETITIONER:

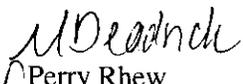
SELF-REPRESENTED

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,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, revoked 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 previous decision of the AAO will be affirmed, and the petition will remain revoked.

The petitioner is church. It seeks to extend the beneficiary's status 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 minister. The petitioner moves the AAO to reopen its December 8, 2011 decision affirming the director's revocation of the approval of the petition because the beneficiary was not working in the position approved for the R-1 nonimmigrant religious worker visa.

On motion, the petitioner states that because of its "relocation, the petitioner was unable to gather additional evidence of the beneficiary's ministrations, and only submitted the few ones that were available. The beneficiary actually worked as a Minister in charge of Tracts and publication, even after being licensed as an attorney." Although the petitioner states that it was including "[a]dditional evidence of beneficiary's activities as the minister in charge of tracts and publication," it included no additional documentation on this issue with its motion.

Furthermore, the petitioner's statement is inconsistent with other statements and documents submitted. The petitioner states that during the onsite inspection of its premises:

The beneficiary explained that because of the growth of the church . . . and because of confidentiality of information between an attorney and a client, it was necessary for the beneficiary to listen and attend to individual cases in a private environment. The beneficiary's colleague gave the beneficiary a space at [REDACTED] [REDACTED] Arlington, [REDACTED] to use for that purpose. In addition, the [REDACTED] is yet to be recognized by the BIA to represent clients.

All activities, including client take in, and general questions, are conducted at [the petitioner's address of record]. We only use [REDACTED] if there is needs [sic] to file any documentation on behalf of the member. Initially, this was to enable the beneficiary have [sic] access to useful material.

The petitioner submits a copy of a lease agreement for the law office of [REDACTED] for the [REDACTED] Arlington, Texas address, a copy of the Board of Immigration Appeals (BIA) decision denying the [REDACTED] [REDACTED] recognition as an authorized representative under 8 C.F.R. § 1292.2(b), and a page from the website of the [REDACTED] [REDACTED] indicating that the beneficiary is in charge of the organization, is an immigration attorney who leads a team of other immigration attorneys, and lists the various jurisdictions in which he is licensed. Thus, the petitioner's evidence establishes that the beneficiary works as an attorney rather than as a minister.

The petitioner's statement that the beneficiary serves as its minister in charge of tracts and publication is also inconsistent with its previous statements on appeal, in which it stated that the beneficiary "now works for the petitioner as [an] immigration attorney and he heads [REDACTED] immigration services department." In its decision of December 8, 2011, the AAO stated that "the petitioner did not petition for the beneficiary to work as an immigration attorney nor did USCIS previously find that an immigration attorney is a religious occupation within the meaning of the regulation."

The petitioner asserts on motion:

[T]he AAO's conclusion is not right. The petitioner filed Alien labor certification with the department of labor on behalf of the beneficiary. This labor certification application was approved in 2007, and the petitioner subsequently filed Form I-140, Immigrant petition for alien worker on behalf of the beneficiary. The petition is still pending. The beneficiary also filed Form I-485, and applied for, and was granted employment Authorization based upon the approved I-485, and applied for, and was granted employment Authorization based upon approved labor certification, and the pending Form I-485 application to register permanent residence or adjust status.

The beneficiary does not have a Texas license, and can therefore not practice Law in the state of Texas without committing unauthorized practice of law. Unlike the beneficiary's colleague who gave him the space, the beneficiary's activities is limited to the authorized immigration attorney as indicated in the certified alien labor certification.

The petitioner does not explain how an approved labor certification for the beneficiary to work as an immigration attorney elevates the position to that of a religious occupation or how it is indicative of the beneficiary performing duties as a minister in charge of tracts and publication.

The petitioner also questions the AAO's decision stating that the petitioner admitted that the beneficiary is not and has not been working solely as a minister in the United States as required by the regulation.¹ The petitioner asserts:

This statement is not totally accurate, the petitioner submitted a labor certification application on behalf of the beneficiary in 2004 to the Department of Labor, Alien Labor Certification at the same time the Form I-360 [REDACTED] was submitted on behalf of the beneficiary because the petitioner was not sure whether the job duties would be classified as religious or non religious

¹ The AAO erroneously cited to the regulation at 8 C.F.R. § 214.2(r)(1)(iii) rather than the regulation at 8 C.F.R. § 214.2(r)(1) which was in effect at the time the petition was filed.

The petitioner's assertion does not clarify its position and offers no evidence that the beneficiary had not worked in a capacity other than that of a minister, the position for which his R-1 visa was approved.

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.²

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). 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 petitioner has submitted no new evidence that the AAO's previous decision was in error. The motion to reopen will therefore 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 December 8, 2011 is affirmed, and the petition remains revoked.

² 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).