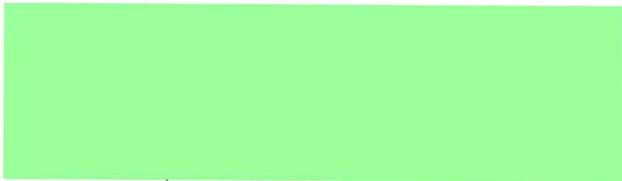
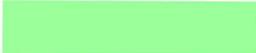


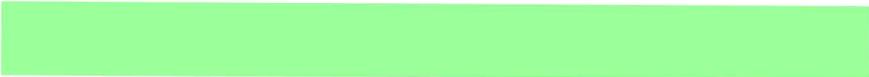
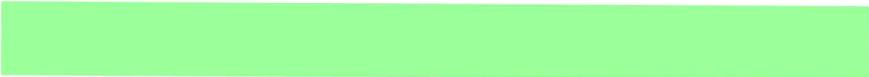


U.S. Citizenship
and Immigration
Services

(b)(6)

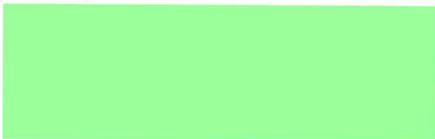


Date: **FEB 04 2013** Office: CALIFORNIA SERVICE CENTER FILE: 

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:



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

(b)(6)

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 Sikh temple. 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 musician and granthi. The AAO affirmed the director's decision finding that the petitioner had not established how it intends to compensate the beneficiary.

Counsel states on motion:

On August 26, 2012, the temple's prior religious musician resigned. . . . Previously the temple provided the AAO with its proposed budget for November 1, 2010 through October 31, 2011. This budget allocated \$21,000 for the payment of the currently employed musician's salary. Since this musician has recently resigned these funds are not available toward the payment of Mr. [REDACTED] and [the beneficiary's] salary.

The petitioner submits unaudited copies of its Proposed Budget for November 1, 2010 through October 31, 2011 and its statement of Income & Expenses for November 1, 2009 through October 31, 2010. The petitioner also submits statements from three of its members, each dated September 12, 2012, pledging \$10,000 to support the beneficiary and Mr. [REDACTED]

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 Counsel states that the funds budgeted for the prior musician in the November 1, 2010 to October 31, 2011 budget are now available to pay the beneficiary as the previous musician resigned on August 26, 2012 but submits no documentary evidence to support her claims. 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). Regardless, counsel does not explain how an individual's resignation in the latter half of 2012 would now make funds budgeted for his salary during the prior budget year available. As the resignation occurred after the budget year, the funds would have already been used for the musician's salary. Thus, the funds were not available to pay the beneficiary as of September 26, 2011 when the petition was filed. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Michelin Tire Corp.*, 17 I&N

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).

Dec. 248 (Reg'l Comm'r 1978). The petitioner's financial statements submitted on motion are all effective after the filing date of the petition. They do not provide verifiable evidence of how the petitioner intended to compensate the beneficiary at the time the petition was filed.

Regarding letters from members of the organization, the regulation at 8 C.F.R. § 214.2(r)(11) requires the petitioner to "state how the petitioner intends to compensate the alien" and to "submit verifiable evidence explaining how the petitioner will compensate the alien." Thus, the regulation twice specifies the petitioner is the entity responsible for compensating the alien. The regulation does not allow the petitioner to discharge this responsibility by arranging for third parties to compensate the beneficiary through non-binding promises to contribute a particular sum to support the beneficiary.

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 August 14, 2012 is affirmed, and the petition remains denied.