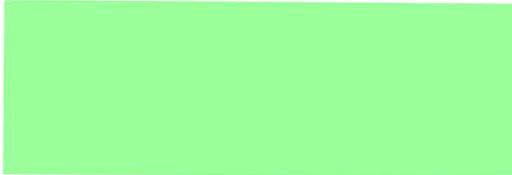


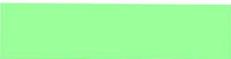
(b)(6)

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: **FEB 07 2013** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:

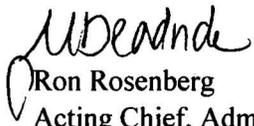
SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. Please note that all documents have been returned to the office that originally decided your case. Please also note that any further inquiry 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 previous decision of the AAO will be affirmed, and the petition will remain denied.

The petitioner identifies itself as a Baptist 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 an assistant pastor/minister. The director determined that the petitioner failed to submit required evidence of its tax-exempt status. The AAO, in its April 29, 2010 dismissal, agreed with the director's determination.

On motion, the petitioner submits a letter from the petitioner, a copy of a United States Postal Service Express Mail receipt for correspondence from the petitioning church to the Internal Revenue Service (IRS) in Covington, Kentucky, a delivery confirmation for such correspondence, and copies of documents already in the record.

In dismissing the petitioner's appeal, the AAO thoroughly and specifically discussed the petitioner's evidence, and found that the petitioner failed to submit the required evidence of its tax-exempt status under 8 C.F.R. § 214.2(r)(9). The AAO considered evidence submitted on appeal of the petitioner's association with Baptist Bible Fellowship International. However, the AAO noted that the documentation did not include an IRS group determination letter for that organization, or evidence that the petitioner is covered by such a group exemption. The AAO also considered the petitioner's argument that, under IRS guidelines, the petitioning church is automatically qualified as an exempt organization under Section 501(c)(3) and is not required to apply for recognition of such exemption. The AAO stated: "[I]n this proceeding, the petitioner seeks a benefit not from the IRS, but from USCIS. 8 C.F.R. § 214.2(r)(9) clearly requires the petitioner to submit an IRS determination letter."

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

On motion, the petitioner asserts that it has applied for recognition of exemption under section 501(c)(3) of the Internal Revenue Code and that the application is currently pending. The petitioner submits a United States Postal Service Express Mail receipt for correspondence sent on May 22, 2010 from the petitioning church to the Internal Revenue Service (IRS) in Covington, Kentucky, as well as confirmation that the correspondence was delivered on May 24, 2010. The AAO notes that the petitioner is required to establish that it met the requirements of a bona fide nonprofit religious organization as of the date of filing, in this case December 10, 2008. Accordingly, the petitioner's assertion that it has since applied for recognition of tax exempt status is not relevant to instant matter. A petitioner must establish eligibility at the time of filing; a petition cannot 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 Dec. 248 (Reg'l Comm'r 1978).

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 II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).

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's motion is not an opportunity for the petitioner to correct its own defects in the record. *Matter of Soriano* 19 I&N Dec. 764 (BIA 1988), held that a petitioner may be put on notice of evidentiary requirements by regulations, written notice such as a request for additional documentation or a notice of intent to deny, or an oral request at an interview. The petitioner was previously put on notice of the requirements for eligibility by the regulations and by a January 15, 2009 Request for Evidence. The evidence could also have been submitted on appeal as the director's decision specified that the petitioner had not established its tax exempt status. Additionally, in its decision of April 29, 2010, the AAO specified the deficiencies in the petitioner's evidence, citing the appropriate regulations and stating that the regulations require a currently valid determination letter from the IRS recognizing tax exempt status under section 501(c)(3) of the Internal Revenue Code. On motion, the petitioner has still failed to submit evidence in compliance with the regulation at 8 C.F.R. § 214.2(r)(9). Therefore, the evidence submitted on motion will not be considered "new" and will not be considered a proper basis for a motion to reopen.

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 April 29, 2010 is affirmed, and the petition remains denied.