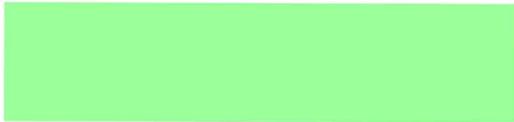




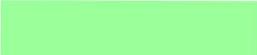
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **FEB 21 2013**

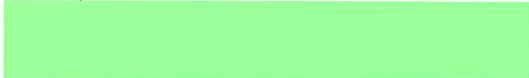
Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE:

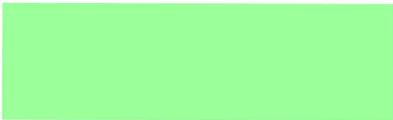
Petitioner:

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

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The Administrative Appeals Office (AAO) summarily 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 church. It seeks to extend the beneficiary's status as a nonimmigrant 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), to perform services as a staff pastor. The director determined that the petitioner had not established that it is a bona fide nonprofit religious organization and that the beneficiary had been a member of its denomination for two full years immediately preceding the filing of the visa petition.

Regarding motions to reopen, the regulation at 8 C.F.R. § 103.5(a)(1)(ii) states in relevant part: "The official having jurisdiction is the official who made the latest decision in the proceeding unless the affected party moves to a new jurisdiction." The latest decision was the AAO's October 15, 2012 decision summarily dismissing the appeal. Therefore, a review of any claims or assertions that the petitioner's motion raises is limited in scope and is restricted to the AAO's prior decision. In addition, to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(iii) requires that the motion must be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding." Furthermore, the regulation at 8 C.F.R. § 103.5(a)(4) requires that "[a] motion that does not meet applicable requirements shall be dismissed." In this case, the petitioner failed to submit a statement as to whether the validity of the AAO's decision has been, or is, the subject of any judicial proceeding. The regulation mandates that this shortcoming alone requires U.S. Citizenship and Immigration Services (USCIS) to dismiss the motions. *See* 8 C.F.R. § 103.5(a)(4).

Notwithstanding the fatal defect noted above, in the AAO's decision summarily dismissing the petitioner's appeal, the AAO found that counsel made only broad allegations about the legality of the implementing regulation and a conclusory statement regarding the beneficiary's membership in the petitioner's denomination. Counsel submitted no brief or other documentation in support of the appeal. To the extent that the petitioner intends the current motion to be a motion to reopen, 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 fails to explain why any of the evidence submitted with this motion could not have been discovered or presented in the previous proceeding.

In the current motion, the petitioner submits a copy of an Internal Revenue Service (IRS) Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, dated December 6, 2011, a copy of an August 21, 2012 letter from the IRS seeking additional information about the application, a November 9, 2012 affidavit from [REDACTED] the petitioner's president and founding pastor, stating that the petitioner is now affiliated with the [REDACTED] and "is

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).

covered by the Church's 501(c)(3) designation," and a November 9, 2012 letter from [REDACTED] general secretary of The General Council of the [REDACTED] advising the petitioner that it has been accepted as an affiliate of that organization and is covered under its group exemption from the IRS.

However, none of the evidence can be characterized as "new." Critically, the petitioner has had two opportunities to supplement the record to meet the eligibility requirements, at filing and in response to the director's RFE. Where the director put the petitioner on notice of a deficiency and the petitioner had multiple opportunities to respond to that deficiency, the AAO need not accept evidence offered for the first time on appeal or motion. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obgaigbena*, 19 I&N Dec. 533 (BIA 1988). The AAO need not consider the sufficiency of the evidence submitted relating its status as a bona fide nonprofit religious organization in the present motion to reopen. Regardless, even if considered, the evidence does not establish eligibility. 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 Dec. 248 (Reg'l Comm'r 1978). The petitioner's evidence submitted on motion reflects that it was accepted as a member of the Assemblies of God on November 9, 2012. The evidence does not establish the beneficiary's membership in the petitioner's denomination at the time the petition was filed. Similarly, the petitioner's evidence submitted on motion does not establish that it qualified as a bona fide nonprofit religious organization as defined by the regulation at 8 C.F.R. § 214.2(r)(3) at the time of filing.

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. Accordingly, 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 15, 2012 is affirmed, and the petition remains denied.