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

(b)(6)

Date: MAR 2 6 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 (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 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 and a subsequent motion to reopen. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration (USCIS) policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The petitioner is a Buddhist temple and community organization. It seeks to classify the beneficiary as a nonimmigrant religious worker under section 101(a)(15)(R)(1) of the Act to perform services as a monk. The AAO affirmed the director's decision that the petitioner had failed to establish how it intends to compensate the beneficiary. The AAO dismissed the petitioner's motion to reopen for failure to establish new facts that were supported by affidavits or other documentary evidence.

The regulation at 8 C.F.R. § 214.2(r)(11) provides:

> *Evidence relating to compensation.* Initial evidence must state how the petitioner intends to compensate the alien, including specific monetary or in-kind compensation, or whether the alien intends to be self-supporting. In either case, the petitioner must submit verifiable evidence explaining how the petitioner will compensate the alien or how the alien will be self-supporting. Compensation may include:
>
> (i) *Salaried or non-salaried compensation.* Evidence of compensation may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. IRS [Internal Revenue Service] documentation, such as IRS Form W-2 [Wage and Tax Statement] or certified tax returns, must be submitted, if available. If IRS documentation is unavailable, the petitioner must submit an explanation for the absence of IRS documentation, along with comparable, verifiable documentation.

On the instant motion, counsel asserts:

> The newly discovered evidence that the officer requests to sufficiency [sic] of the motion was the IRS account transcript, confirming the filing of the IRS Form 990 return. The petitioner executed the return on September 22, 2011, and submitted the copy a few weeks later, before any IRS documentation of receipt would have been available. The IRS transcript indicates that the return's filing deadline was September

> 30, 2011 indicating that the petitioner did not prepare an untimely return solely for the benefit of the USCIS rather than the IRS. Additionally, the RFE [Request for Evidence] of May 2011 did not request specifically what parts of the interior that the photographs should show. Therefore, the May 2012 Motion was the first time that the petitioner has had to provide interior photos, which meets the standard for "new" evidence.

Counsel's assertion is not persuasive. In denying the petition, the director stated that the petitioner had failed to "submit any current IRS documentation or an explanation for its absence." (Emphasis added.) The director also found that "there is no verifiable evidence[] to show how the petitioner will provide room and board to the beneficiary or has provided for the three employees they currently have." In supplemental information submitted subsequent to its August 16, 2011 appeal, the petitioner submitted a copy of an IRS Form 990, Return of Organization Exempt from Income Tax, for the tax year 2010 that the petitioner dated September 22, 2011. In dismissing the appeal, the AAO found that the petitioner submitted no documentation that the return had been filed with the IRS. The AAO also found that while the petitioner had submitted photographs of the church building, it submitted no evidence of the lodging that it stated it would provide to the beneficiary.

With its May 14, 2012 motion to reopen, the petitioner submitted a copy of an IRS tax transcript indicating that it filed the return on September 30, 2011. The AAO notes that the petitioner did not complete the IRS Form 990 until after its appeal, and that it submitted no documentation with the appeal or with the subsequent documentation forwarding a copy of the IRS Form 990 to be considered as part of the appeal, to indicate that the return was filed with the IRS. The petitioner submitted neither a copy of the IRS transcript or evidence of mailing the return prior to the AAO's decision of April 23, 2012.

Although in its decision on the motion to reopen the AAO limited its discussion to the photographs submitted by the petitioner on motion, the IRS transcript was also not "new" evidence. As stated in the AAO's decision, 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] In the instant motion, counsel asserts that the petitioner could not have provided documentation of the IRS filing because "the receipt would [not] have been available." However, counsel submits no documentation to support this assertion. 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).

Furthermore, counsel asserts that the IRS transcript indicates that the filing date of the return was September 30, 2011 "indicating that the petitioner did not prepare an untimely return solely for the benefit of the USCIS rather than the IRS." Again, counsel's assertion is not supported by the record. The tax transcript shows a date of September 30, 2011, which is the "return due date or returned received date (whichever is later)." Under IRS regulation, the Form 990 must be filed by the 15th day of the fifth month after the end of the organization's accounting period.[2] Nothing on the face of

[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).

[2] Instructions for Form 990 Return of Organization Exempt from Income Tax, p. 6.

the petitioner's IRS Form 990 or on the IRS tax transcript establishes the petitioner's required filing date. There is no evidence that the petitioner timely filed its tax return.[3] Furthermore, as discussed above, the petitioner submitted no other documentation, such as evidence of transmission of the return to the IRS for processing, prior to the AAO's decision. Accordingly, the petitioner has not established that the IRS Form 990 submitted with the motion to reopen was "new" evidence.

Counsel also asserts that "the RFE of May 2011 did not request specifically what parts of the interior that the photographs should show. Therefore the May 2012 Motion was the first time that the petitioner has had to provide interior photos, which meets the standard for 'new' evidence." Again counsel's assertion is not persuasive.

The regulation at 8 C.F.R. § 214.2(r)(11) requires the petitioner to provide "verifiable documentation that room and board will be provided." In denying the petition, the director found that the petitioner had not provided evidence to establish how it would provide room and board to the beneficiary or of the lodging that it provides to its current employees. On appeal, the petitioner stated that its temple "is also a monastery where some Buddhist monks live as a common home." However, it provided no documentation of this "common home." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). A simple unsupported statement that the monks live in a common home is not verifiable evidence of the proffered non-salaried compensation. With its motion to reopen, the petitioner submitted photographs of the living quarters proposed for the beneficiary. The AAO found that these photographs were not "new" evidence. The petitioner had an opportunity to submit this documentation with the petition, in response to the RFE, and on appeal but failed to do so.

Counsel asserts on the instant motion:

> The adjudicating officer did not apply the entire definition and failed to properly evaluate the proffered evidence. Petitioner submitted a general warranty deed for the temple as evidence of the living accommodations to be provided. This shows verifiable proof of ownership of the property in question. It directly addresses the ability of the organization to provide shelter to the beneficiary. Actual ownership of the temple building is arguably one of strongest forms of evidence in support of contention that petitioner is a well-established and bonafide organization that will provide the traditional non-salaried compensation to beneficiary.

With the petition and in response to the RFE, the petitioner submitted documentation regarding the closing requirements for its purchase of the property that is its current address of record. With the motion to reopen, the petitioner submitted a copy of the general warranty deed for the property with the closing documents. None of the documentation submitted indicates that the property contained living spaces that would be used by the monks. Furthermore, simple ownership of real property is

[3] The AAO notes that the tax transcript indicates that the IRS abated the delinquency penalty against the petitioner. However, the abatement alone is insufficient to establish that the return was timely filed.

not evidence that the petitioner can provide non-salaried compensation to its employees. Not all Buddhist temples provide lodging within the temple itself. The petitioner failed to provide any evidence, despite three opportunities to do so, prior to the motion to reopen, of the lodging that it stated it would provide to the beneficiary.

Counsel has provided no pertinent precedent decisions to establish that the AAO's decision of December 18, 2012 was based on an incorrect application of law or USCIS policy or that the AAO's previous decisions were incorrect based on the evidence of record at the time of the initial decisions.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. As no new evidence has been presented to overcome the grounds for the previous dismissal, and no reasons set forth indicating that the decision was based on an incorrect application of law, the previous decisions of the AAO and the director will be affirmed. The petition is denied.

ORDER: The AAO's decision of April 23, 2012 is affirmed. The petition remains denied.