



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: OCT 24 2013 OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

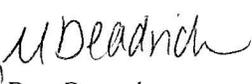
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
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 is a Buddhist temple. It seeks to classify the beneficiary as a nonimmigrant religious worker under section 101(a)(15)(R) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R), to perform services as a religious minister. The director determined that the petitioner failed to establish how it intends to compensate the beneficiary. The AAO, in its March 22, 2013 decision, affirmed the director's decision.

On the Form I-129, Petition for a Nonimmigrant Worker, Supplement R, the petitioner indicated that the beneficiary was forbidden to accept monetary compensation, but that the petitioning temple and its members would provide the beneficiary's "[basic] needs, including, accommodation, food, utilities, clothing and transportation." In the March 22, 2013 decision dismissing the petitioner's original appeal, the AAO specifically and thoroughly discussed the petitioner's evidence. The petitioner had submitted copies of its utility bills with corresponding unprocessed checks, letters from the petitioner asserting the beneficiary's residence at the petitioning temple and explaining the arrangement for food for the beneficiary, an article about Buddhist monks, and statements from members of the congregation attesting to the provision of food for the beneficiary at the petitioning temple. The AAO stated:

While the petitioner has provided documentation regarding food for the beneficiary, it has provided no verifiable documentation of any "accommodation . . . clothing and transportation" that it stated it would provide. Although the petitioner submitted copies of utility bills, it provided no other documentary evidence, such as evidence of its ownership or lease of the building and of the living quarters provided to the beneficiary.

On motion, the petitioner submits a letter from the Lord Abbot of the petitioning temple, a statement from the beneficiary, an undated correspondence addressed to the beneficiary at the petitioning temple, and statements from members of the congregation attesting to the beneficiary's residence at the temple and the provision of transportation and clothing for the beneficiary. In his letter, the Lord Abbot describes the provision of the beneficiary's housing, transportation, and clothing, and states: "There is little evidence of the Monk's living arrangements other than letters from the congregation confirming that they also know that the Monk lives in the Temple." The beneficiary also describes his non-salaried compensation and states:

I live within the Temple itself. I have only one document to prove this which is the letter that I received from the Social Security Administration when I was given my social security number. There are no other documents or correspondence because I have [sic] not applied for anything and do not make any payments in my name.

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

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). All of the evidence submitted on motion was previously available and could have been provided on appeal. The assertions made on motion are not new facts and the evidence submitted on motion is not “new” and, therefore will not be considered a proper basis for a motion to reopen. Further, on motion, the petitioner again fails to submit documentary evidence of its ability to provide accommodation to the beneficiary. The petitioner asserts on motion that there is little evidence of this apart from the statements of congregants, but does not explain the lack of “evidence of its ownership or lease of the building and of the living quarters provided to the beneficiary,” as mentioned by the AAO in its previous decision.

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.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The motion to reopen is dismissed, the decision of the AAO dated March 22, 2013, is affirmed, and the petition remains denied.

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).