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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: DEC 0 8 2014 OFFICE: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

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:

[redacted]

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 petitioner appealed that decision to the Administrative Appeals Office (AAO). We dismissed the petitioner's appeal from that decision. The matter is now before us on a motion to reopen. We will grant the motion and affirm the denial of the petition.

The petitioner is a Orthodox Christian Church. It filed Form I-129, Petition for a Nonimmigrant Worker, on October 26, 2012, seeking 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 priest. The director denied the petition on May 8, 2013, because the petitioner had not established how it intends to compensate the beneficiary, and because the petitioner provided conflicting information regarding its location.

The petitioner appealed the original decision on June 17, 2013. At that time, the petitioner submitted compiled financial statements for calendar years 2011 and 2012, and claimed that a brief and/or additional evidence would be forthcoming within 30 days. We dismissed the appeal on July 23, 2014, stating "the record contains no further substantive submission from the petitioner. We therefore consider the record to be complete as it now stands." Our July 2014 appellate decision contains further details about the proceeding.

On motion, the petitioner does not contest our finding that the petitioner never supplemented the appeal. The petitioner's motion consists of a legal brief and a compiled financial statement for calendar year 2013.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). The 2013 financial statement constitutes new evidence, thereby fulfilling the regulatory requirement, but this new evidence, and the new facts it contains, does not address or overcome the stated grounds for denial of the petition.

Section 101(a)(15)(R) of the Act pertains to an alien who:

> (i) for the 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States; and
>
> (ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii).

Section 101(a)(27)(C)(ii)(I) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(I), pertains to a nonimmigrant who seeks to enter the United States solely for the purpose of carrying on the vocation of a minister of the religious denomination described above.

The decision rests on two factors: the petitioner's compensation, and the accuracy of information provided on the petition form.

I. Compensation

The regulation at 8 C.F.R. § 214.2(r)(11) reads, in part:

> *Evidence relating to compensation.* Initial evidence must state how the petitioner intends to compensate the alien, including specific monetary or in-kind compensation. . . . [T]he petitioner must submit verifiable evidence explaining how the petitioner will compensate the alien. . . .
>
> > (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 [U.S. Citizenship and Immigration Services]. IRS [Internal Revenue Service] documentation, such as IRS Form W-2 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 Section 1, line 5d of the employer attestation submitted with the petition, the petitioner stated: "The alien will not be self-supporting. The church will fully support the alien by covering all the alien's medical expenses, provide for food, room, place of worship, all necessities for any work to be done, as well as [a]ny personal needs." The initial filing included no evidence to support these claims. On Part 5, lines 14-15 of Form I-129, the petitioner claimed gross annual income of $387,580 and net annual income of $48,374.

The director issued a request for evidence on January 23, 2013, instructing the petitioner to submit the types of evidence described in the regulation at 8 C.F.R. § 214.2(r)(11)(i), including the requirement that the petitioner submit either IRS documentation or an explanation for its absence. The petitioner's response did not include the evidence required by that regulation. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the benefit request. 8 C.F.R. § 103.2(b)(14). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

The director denied the petition, stating that the petitioner had failed to submit the required evidence regarding the beneficiary's intended compensation. The compiled financial statements submitted on appeal do not meet the requirements spelled out in the regulations at 8 C.F.R. § 214.2(r)(11). In dismissing the appeal, we concluded: "The petitioner has not submitted required evidence regarding the beneficiary's intended compensation, and has neither accounted for its failure to do so nor provided alternative evidence that would establish the necessary facts. Therefore, the petition may not be approved."

On motion, counsel states:

> The petitioner responded to the . . . request for evidence, and on appeal to the AAO, submitting copies of compiled financial statements. . . . The documentation provided the money set aside "for salaries, leases, etc." by the petitioner for the beneficiary, in conformity with the "budgets" listed as acceptable evidence under the USCIS regulation at 8 C.F.R. § 214.2(r)(11).

The petitioner's response to the request for evidence did not include compiled financial statements as counsel claims on motion. The petitioner did, as claimed, submit the financial statements on appeal. The petitioner did not explain its failure to submit this evidence when first requested. The financial statements are not "budgets," and evidence of income is not evidence that the income has been "set aside for salaries, leases, etc."

On Form I-129, completed in October 2012, the petitioner claimed gross annual income of $387,580 and net annual income of $48,374. These figures do not match the figures on the financial statement for 2011, the last full year for which such figures would have been available at the time. The 2011 statement shows gross income of $306,589, and net income of $40,883. The 2012 statement shows income of $353,693 and net income of $44,608. These figures mark an increase from 2011, but they are still lower than what the petitioner claimed on Form I-129.

The only new evidence submitted on motion is a compiled financial statement for 2013. The evidentiary shortcomings of the 2011 and 2012 statements also apply to the new 2013 statement, and the submission of this document does not address or overcome the stated grounds for denial of the petition or dismissal of the appeal. The 2013 statement shows $428,134 in gross income, and net income of $46,087. The net income figure is still below the figure that the petitioner claimed on Form I-129.

The newly submitted evidence does not establish that the petition was approvable at the time of filing, as required by the regulation at 8 C.F.R. § 103.2(b)(1). The financial statements are insufficient to meet the requirements at 8 C.F.R. § 214.2(r)(11)(i), and they are not consistent with the petitioner's claims about its finances as stated on Form I-129.

Discrepancies on Form I-129 also formed the basis for the second ground for denial.

II. The petitioner's address

Form I-129 requires the petitioner to provide its own address, and the address where the beneficiary will work. This is consistent with the regulation at 8 C.F.R. § 214.2(r)(8)(x), which requires the intending employer to attest to the specific location(s) of the proposed employment. The address Virginia, appears four times on the Form I-129, with no other address provided for the petitioning entity or the workplace. Twice, the address appears near a signature line for an official of the petitioning entity or its religious denomination. Bishop of the petitioning church signed in both places, thereby attesting under penalty of perjury that the information on the petition form was correct. Bishop also signed an accompanying Form

G-28, Notice of Entry of Appearance as Attorney or Representative, his signature appearing directly below the same address. He therefore signed his name at least three times close to the address. His signature conferred responsibility for the content of the forms he signed. *Cf. Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.*, 498 U.S. 533 (1991) (Represented party who signs his or her name to documents filed in court bears personal, nondelegable responsibility to certify truth and reasonableness of document).

In the request for evidence, the director requested documentation "to establish religious activity at VA." The petitioner's response included documentation regarding The response included no information or documentation about the address and no explanation for its absence, but it did include a second copy of Form I-129, showing the address as before.

In denying the petition, the director stated that "the petitioner has not provided any explanation for the variation" in the addresses shown on the Form I-129 and the supporting documents. Because of this variation, the director stated that the petitioner had not established that the documents related to the petitioning entity. The petitioner did not address this issue on appeal. When an appellant fails to offer an argument on an issue, that issue is abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885, at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims abandoned when not raised on appeal to the AAO).

In dismissing the appeal, we concluded: "The record contains no explanation for why the petitioner had originally claimed an address on and asserted that the beneficiary would work there." We added that "evidence submitted in support of the petition contradicts claims that the petitioner made, under penalty of perjury, on the petition form itself. The petitioner has not explained or accounted for the discrepancy."

On motion, counsel states: "all supporting documentation . . . shows the church address as being VA." This assertion is true, but it does not answer the question of why the petitioner originally gave a different address, or why the petitioner offered no explanation in response to the request for evidence or on appeal.

Counsel states: "The Form I-129 provided the address of petitioner's guest house to be used by the beneficiary and where the former priest resided, this being a secretarial error in filling out the petition." The petitioner has submitted no evidence to show that it rents, owns, or otherwise controls the property, and the existing evidence is not consistent with such a claim. The petitioner's financial statements do not reflect ownership of a guest house. They do show ownership of a building worth $1,000,000; loan documents in the record show that the petitioner took out a $920,000 mortgage on the property. The interest on that mortgage is consistent with the interest payments reflected on the financial statements. The financial statements do not show rental costs for the property.

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)). 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); *see also Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983).

We will affirm the dismissal of the appeal for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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, the petitioner has not met that burden.

ORDER: The AAO's decision of July 23, 2014 is affirmed. The petition remains denied.