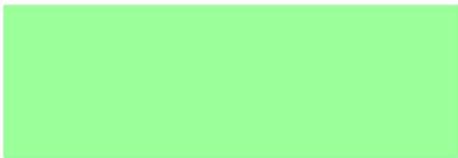


(b)(6)



U.S. Citizenship
and Immigration
Services



DATE: **JUL 23 2014** 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:

SELF-REPRESENTED

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,


f Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based non-immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and motion to reconsider. The motion to reopen will be granted for consideration of new evidence submitted with the motion. The motion to reconsider will be dismissed. Our previous decision will be affirmed, and the petition will remain denied.

The petitioner is a Baptist church. It seeks classification of the beneficiary as a nonimmigrant 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), to perform services as a pastor. The director determined that the petitioner failed to submit required evidence to establish that it qualifies as a bona fide non-profit religious organization.

In our decision dismissing the petitioner's original appeal, we specifically and thoroughly discussed the petitioner's evidence and determined that the petitioner failed to establish any error on the part of the director. We noted that a petitioner must establish eligibility at the time of filing and each benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978). As the petitioner failed to submit required evidence, the petitioner failed to establish eligibility for the benefit sought.

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). A motion to reconsider must: (1) 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 [USCIS] policy; and (2) 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).

In support of its motion to reopen and reconsider, 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, which the petitioner asserts it has filed with the appropriate fee. The petitioner submits no proof that the form was actually filed with or received by the IRS. The petitioner also submits with the motion to reopen and motion to reconsider a copy of a check made payable to the IRS for \$850.00 and referenced "SRBC-501(c)(3)." A copy of the back side of the check was not presented and there is no evidence that the check was negotiated through normal banking channels. Based upon the evidence submitted, the matter will be reopened and the new evidence considered.

The submitted IRS Form 1023, documenting the petitioner's ongoing effort to obtain an IRS determination letter, does not demonstrate the petitioner's submission of required initial evidence and eligibility at filing. Therefore, the evidence submitted with the motion to reopen does not overcome the basis of our prior decision. Regardless, as indicated in our prior decision, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will 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 Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

In support of the motion to reconsider, the petitioner does not present arguments or cite precedent decisions to establish that our previous decision was based on an incorrect application of law or policy and was incorrect based on the evidence of record at the time of the initial decision as required by 8 C.F.R. § 103.5(a)(3). Accordingly, the motion to reconsider will be dismissed.

Our previous decision will be affirmed and the petition will remain denied. 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 motions are dismissed. The decision of the AAO dated February 7, 2014, is affirmed, and the petition remains denied.