

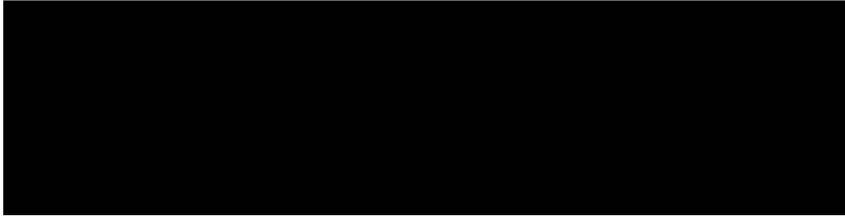
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, D.C. 20529-2090  
MAIL STOP 2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



C<sub>1</sub>

FILE: WAC 06 131 51813 Office: CALIFORNIA SERVICE CENTER Date: OCT 30 2008

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal. The matter is now before the AAO on a motion to reconsider. The AAO will dismiss the motion.

The petitioner is a Coptic Orthodox church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a deacon. The director determined that the petitioner had not established that: (1) the beneficiary had the requisite two years of continuous work experience as a deacon immediately preceding the filing date of the petition; (2) the petitioner had made a qualifying job offer to the beneficiary; or (3) the position offered to the beneficiary qualifies as a religious occupation. In dismissing the appeal, the AAO affirmed each of the above stated grounds for denial.

The regulation at 8 C.F.R. § 103.5(a)(3) reads:

*Requirements for motion to reconsider.* 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 Service 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.

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On motion, counsel states: "Parties request that they have up to and including December 17, 2007 in which to file their Brief in support of this Motion to Reconsider for additional materials are being supplied by the organization's Church on a national level." While 8 C.F.R. § 103.3(a)(2)(vii) provides that a petitioner may supplement a previously-filed appeal, there exists no comparable provision in 8 C.F.R. § 103.5 to permit a petitioner to supplement a previously-filed motion. The regulatory definition of a motion to reconsider, at 8 C.F.R. § 103.5(a)(3), states that the motion "must, *when filed*, establish that the decision was incorrect based on the evidence of record *at the time of the initial decision*" (emphasis added). A motion that relies on subsequent submission of evidence is not sufficient "when filed," and if that motion rests on newly submitted evidence, then logically it does not rely entirely on "the evidence of record at the time of the initial decision."

Form I-290B, Notice of Appeal or Motion, offered the petitioner the following six options:

- A.  I am filing an appeal. My brief and/or additional evidence is attached.
- B.  I am filing an appeal. My brief and/or additional evidence . . . will be submitted to the AAO within 30 days.
- C.  I am filing an appeal. No supplemental brief and/or additional evidence will be submitted.
- D.  I am filing a motion to reopen a decision. My brief and/or additional evidence is attached.
- E.  I am filing a motion to reconsider a decision. My brief and/or additional evidence is attached.
- F.  I am filing a motion to reopen and a motion to reconsider a decision. My brief and/or additional evidence is attached.

The petitioner, through counsel, selected option E. We note that, while there is an option for later submission of a brief on appeal, there is no corresponding option for later submission of a brief on motion. The appeal form thus notified the petitioner that any new evidence on motion must accompany the filing of that motion.<sup>1</sup>

We note that, even if the regulations did permit the petitioner to supplement a motion after filing, the record does not contain any further submission from the petitioner or counsel, although counsel had asserted that further evidence would be submitted no later than December 17, 2007, more than ten months ago at the time of this decision.

Because the regulations do not permit a petitioner to supplement a motion after that motion has been filed, we must limit our consideration to what accompanied the Form I-290B at the time of filing. The filing of the motion included no separate brief; there was only the Form I-290B itself and a letter from counsel regarding procedural issues rather than the merits of the motion. On Form I-290B, under "Basis for the appeal or motion," counsel wrote:

This Motion for Reconsideration is based upon the AAO reviewing it's [*sic*] erroneous decision denying religious worker status based upon a filing by the [petitioner]. Specifically, the AAO is requested to review it's [*sic*] incorrect conclusions that the Beneficiary failed to possess the required 2 years of experience, that the position was not in fact religious or full-time in nature and that the position is not one that is voluntary in nature.

The above statement is not an argument or series of arguments that would qualify as a motion to reconsider. Rather, the statement is simply a list of conclusions, unsupported by arguments or precedent decisions. Counsel has simply deemed the AAO's findings to be "erroneous," with no explanation as to how this is so. Simply expressing disagreement with the outcome of the decision is not, and cannot be, adequate basis for a motion to reconsider.

For the above reasons, the AAO finds that the petitioner's submission does not meet the applicable requirements of a motion. The AAO will therefore dismiss the motion as required by 8 C.F.R. § 103.5(a)(4).

**ORDER:** The motion is dismissed.

---

<sup>1</sup> We note that the petitioner used the July 30, 2007 revision of Form I-290B. The form has since been revised (on March 4, 2008) to correct an error in option B and to delete the reference to "additional evidence" in option E. By definition at 8 C.F.R. § 103.5(a)(3), a motion to reconsider that is not combined with a motion to reopen does not include new evidence.