U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 19 2004

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:

[redacted]

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, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) dismissed the petitioner's subsequent appeal. The petitioner has filed a motion to reconsider. The motion will be dismissed.

The petitioner is a 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, 8 U.S.C. § 1153(b)(4), to perform services as a pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a pastor immediately preceding the filing date of the petition.

Citizenship and Immigration Services (CIS) regulations at 8 C.F.R. § 103.5(a)(1)(i) state, in pertinent part:

> Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before the Service [now CIS] filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

In this instance, the AAO dismissed the petitioner's appeal on June 27, 2003. The California Service Center received the motion on August 7, 2003. Counsel states, "[c]ounsel is aware of the delay of the memorandum, and respectfully requests the understanding that our attempts to secure evidence from the [petitioner] took second priority to the many missions and community services." The petitioner's decision to focus on other priorities, while understandable, is not beyond the control of the petitioner. We note that, while counsel refers to "attached . . . supporting evidence," the record contains no new evidence attached to the motion, and counsel does not provide any information to describe or identify the claimed evidence. The body of the motion contains no references to supporting evidence.

CIS regulations establish the distinction between a motion to reconsider and a motion to reopen. 8 C.F.R. § 103.5(a)(2) states that 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)(3) states that 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.

Thus, a motion based on newly submitted evidence is a motion to reopen. A motion without new evidence, devoted to the argument that the director should have decided differently based on previously submitted materials, is a motion to reconsider. Counsel, indeed, repeatedly refers to "reconsideration" in the motion brief. 8 C.F.R. § 103.5(a)(1)(i), quoted above, contains a provision for late filing of a motion to *reopen*, but not for late filing of a motion to *reconsider*. While, on occasion, factors beyond a petitioner's control may prevent the petitioner's timely acquisition of new evidence to support a motion to reopen, no such factors prevent the formulation of arguments. Therefore, the regulations contain no provision to permit the acceptance of an untimely filed motion to reconsider, and the petitioner's untimely motion must be dismissed.

ORDER: The motion is dismissed.