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

U.S. Citizenship and Immigration Services

[redacted]

C1

Date NOV 0 9 2012 Office: CALIFORNIA SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) remanded the matter to the director for consideration under new regulations. The director again denied the petition and certified the decision to the AAO for review. The AAO affirmed the denial of the petition. The matter is now before the AAO on a motion to reopen and a motion to reconsider. The motions 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 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 monk. The director determined that the attestation submitted by the petitioner was incomplete. The AAO, in its April 5, 2012 dismissal, agreed with the director's determination and additionally found that the petitioner failed to establish that the beneficiary had the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition.

On motion, the petitioner submits a letter from the petitioner, copies of property records relating to the petitioning temple, unaudited financial statements from 2011, copies of utility bills, a copy of the petitioner's directory listing in the Yellow Pages, a membership list, promotional materials, photographs, statements regarding the non-salaried compensation provided by the petitioner (previously submitted), copies of the beneficiary's high school diploma and equivalency diploma, a letter from [redacted] in Laos, as well as copies of documents already in the record.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(iii) requires that the motion must be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding." Furthermore, the regulation at 8 C.F.R. § 103.5(a)(4) requires that "[a] motion that does not meet applicable requirements shall be dismissed." In this case, the petitioner failed to submit a statement regarding if the validity of the decision of the AAO has been or is subject of any judicial proceeding.

Notwithstanding the above, in the decision dismissing the petitioner's original appeal, the AAO specifically and thoroughly discussed the petitioner's evidence and determined that the petitioner had not submitted a complete employer attestation as required under 8 C.F.R. § 204.5(m)(7), and had not established that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition. Regarding the attestation, the AAO stated that USCIS had advised the petitioner of the attestation requirement in a February 4, 2009 Notice of Intent to Deny. The AAO noted that, in response to the notice, the petitioner submitted a series of documents, mostly unsigned, which failed to specifically attest to all of the information required under 8 C.F.R. § 204.5(m)(7). Further, in response to the certified decision in which the director found the petitioner's attestation "neither complete nor acceptable," the petitioner did not submit the Employer Attestation portion of the revised Form I-360 petition, instead submitting a completed Employer Attestation from the Form I-129 Supplement Q/R, along with a document titled "Attestation of the President of [redacted]

[redacted] which again failed to attest to all of the information required by the regulations.

Regarding the beneficiary's work experience, the AAO noted that, although the beneficiary was outside the United States for most of the two-year qualifying period, the petitioner provided no evidence regarding the beneficiary's employment abroad apart from assertions by the petitioner and the beneficiary. 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)).

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]

On motion, the petitioner submits a letter from the petitioner attesting to the information specified under 8 C.F.R. § 204.5(m)(7). Additionally, as evidence of the beneficiary's purported employment abroad, the petitioner submits a letter from [redacted] temple in [redacted], with an uncertified translation, purportedly asserting that the beneficiary worked as a monk at that temple for non-salaried compensation from 2002 until his departure for the United States in April 2006.

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). The petitioner's motion is not an opportunity for the petitioner to correct its own defects in the record. *Matter of Soriano* 19 I&N Dec. 764 (BIA 1988), held that a petitioner may be put on notice of evidentiary requirements by regulations, written notice such as a request for additional documentation or a notice of intent to deny, or an oral request at an interview. The petitioner was previously put on notice of the requirements for eligibility by the regulations as well as the February 4, 2009 Notice of Intent to Deny. Therefore, the evidence submitted on motion will not be considered "new" and will not be considered a proper basis for a motion to reopen. Furthermore, the evidence submitted on motion again fails to establish that the beneficiary was engaged in qualifying religious work during his time in Laos. Because the petitioner failed to submit a certified translation of the letter from [redacted] the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Additionally, the petitioner did not provide any documentary evidence of the non-salaried compensation purportedly provided by [redacted] as required under 8 C.F.R. § 204.5(m)(11).

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

[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 II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).

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.

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 U.S. Citizenship and Immigration (USCIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new or previously unavailable evidence. See *Matter of Cerna*, 20 I&N Dec. 399, 403 (BIA 1991).

A motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior decision. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). Instead, the moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision or must show how a change in law materially affects the prior decision. *Id.* at 60.

The motion to reconsider does not allege that the issues, as raised on appeal, involved the application of precedent to a novel situation, or that there is new precedent or a change in law that affects the AAO's prior decision. Instead, counsel asserts that the petitioner now provides the required documentation to establish eligibility. Counsel additionally cites two AAO decisions addressing whether the two years of qualifying experience must be full-time. The AAO first notes that it is not clear how this issue relates to the instant case. Further, the cited decisions predate the current regulations, published on November 26, 2008. Accordingly, the cited decisions interpret regulations which are no longer in effect and are not relevant to the instant case. As noted above, a motion to reconsider must include specific allegations as to how the AAO erred as a matter of fact or law in its prior decision, and it must be supported by pertinent legal authority. Because the respondent has failed to raise such supported allegations of error in his motion to reconsider, the AAO will dismiss the motion to reconsider.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The motion to reopen and the motion to reconsider are dismissed, the decision of the AAO dated April 5, 2012, is affirmed, and the petition remains denied.