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

(b)(6)

DATE: AUG 16 2013 OFFICE: CALIFORNIA SERVICE CENTER

IN RE: Petitioner:
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:

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
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The AAO withdrew the decision and remanded the matter for a new decision. The director denied the petition and certified the decision to the AAO for review. The AAO affirmed the denial of the petition, and subsequently dismissed the petitioner's motion to reopen and reconsider. The matter is now before the AAO on a motion to reconsider. The AAO will dismiss the motion.

The petitioner seeks classification 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 minister at but the petitioner has sometimes worked at a branch based in Florida.

The petitioner filed the Form I-360 petition on May 18, 2007. The director initially denied the petition on September 22, 2009, stating that the petitioner had not established a qualifying offer of employment. On May 12, 2011, the AAO withdrew the director's decision and remanded the petition for a new decision based on revised regulations. Stating that the compliance review process failed to verify the petitioner's employment, the director again denied the petition on November 16, 2011, and certified the decision to the AAO for review. The AAO affirmed the certified decision on July 30, 2012. The petitioner filed a motion to reopen and reconsider, which the AAO dismissed on January 22, 2013. The matter is now before the AAO on a motion to reconsider.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 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;
>
> (ii) seeks to enter the United States—
>
> > (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
> >
> > (II) before September 30, 2015, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
> >
> > (III) before September 30, 2015, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

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 USCIS 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. 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).

The denial of the petition concerns the compliance review process, described in the USCIS regulation at 8 C.F.R. § 204.5(m)(12):

> *Inspections, evaluations, verifications, and compliance reviews.* The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

The USCIS regulation at 8 C.F.R. § 204.5(m)(7)(viii) requires the intending employer to attest to the specific location(s) of the proposed employment. identified as a pastor of signed an employer attestation listing only one such address, specifically

The AAO's July 30, 2012 decision reads, in part:

> In her November 16, 2011 certified decision denying the petition, the director notes that a USCIS inspector conducted site visits to the petitioner's work location on September 17, 2011 and October 1, 2011. The director states that, both times, the USCIS inspector found the location to be locked without anyone inside. . . .
>
> The director . . . found that the petitioner had failed to complete the requisite pre-approval inspection satisfactorily and that the petition must be denied.
>
> On December 5, 2011, counsel for the petitioner submitted a brief and supporting documents. Counsel asserts that the nature of the petitioner's work requires him to

travel from place to place and to make television and radio appearances. Counsel claims that the petitioner was engaged in religious activities offsite during the times of the two USCIS visits, September 17, 2011 and October 1, 2011.

The petitioner submits copies of two brochures. The first brochure reflects that he and from September 16th to September 18th of an unmentioned year starting at 8:00 PM each night at The AAO finds that this brochure reflects that the beneficiary's activities were only in the evening, were on the same street and very close to his work location, and were during an unnamed year. The AAO does not find this brochure to constitute persuasive evidence of the beneficiary's inability to be present at his work location during the September 17, 2011 USCIS site visit.

The second brochure reflects that the beneficiary was leading a on September 30th and October 1st of an unmentioned year starting at 7:00 PM each night at The AAO finds that this brochure would constitute persuasive evidence of the beneficiary's inability to be present at his work location during the October 1, 2011 USCIS site visit, but that the brochure does not state the year in which this event purportedly took place. Accordingly, the AAO finds that the petitioner has failed to complete a USCIS pre-approval inspection satisfactorily pursuant to 8 C.F.R. § 204.5(m)(12), thus evidencing that his church was operating in the capacity claimed on the petition.

The petitioner then filed a motion to reopen and reconsider, which the AAO dismissed on January 22, 2013, stating:

In support of the motion, the petitioner submits copies of additional brochures and website printouts regarding the religious events at which the petitioner was purportedly working during the site visits. Although some of the newly submitted brochures indicate that the events took place in 2011, the petitioner also submits a printout which lists the times, days, and months of the same events from the website: (Emphasis added). Counsel and the petitioner's employer also assert for the first time on motion that the site visit location, is the church's administrative office, while "the main church" is at No explanation is provided for the failure to include this address on the "List of the specific address(es) or location(s) where the alien will be working" as part of the Employer Attestation submitted in response to the May 31, 2011 Request for Evidence. Further, no explanation is provided as to why this assertion was not made in response to the director's certified decision. Regardless, 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). All of the evidence submitted on motion was previously available and could have been provided on appeal. The petitioner's motion is not an opportunity for the petitioner to correct its own defects in the record. Counsel's arguments on motion are not new facts and the evidence submitted on motion is not "new" and, therefore will not be considered a proper basis for a motion to reopen. Further, as discussed above, the petitioner's evidence on motion includes discrepancies which have not been resolved. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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 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.

In the motion to reconsider, the petitioner reiterates arguments already addressed by the AAO in its dismissal of the original appeal, namely, that the petitioner's work involves offsite evangelism and that he was engaged in religious work elsewhere during the site visits. . . . 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, the petitioner generally reiterates prior arguments and notes the AAO's failure to discuss evidence which . . . does not affect the outcome of the decision. 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 allegations of error in his motion to reconsider, the AAO will dismiss the motion to reconsider.

On motion from the AAO's January 2013 decision, counsel states:

> The issue is whether the Petitioner (or his employer) has satisfactory [*sic*] completed a USCIS pre-approval inspection. . . .
>
> 8 C.F.R. 204.5(m)(12) provides that supporting evidence submitted may be verified by USCIS through **any** (*emphasis added*) means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. That means that site inspection is not the only prerequisite, and is not the only conclusive evidence that Petitioner must show. Therefore Petitioner claims that USCIS erred in determining based on two unsuccessful site visits that Petitioner failed THE pre-approval inspection. Petitioner has provided ample information and evidence explaining his absence from this location where site visits took place. Petitioner had and still has overwhelming, undisputable evidence of his employment, activities and religious services that he provides to the community through his sponsoring organization [redacted] That evidence unequivocally outweighs two perfunctory site visits by [USCIS officers].

Counsel states: "Petitioner has tried to explain that [redacted] is a ministry that operates globally, all over the United States. Organization's members (including first and foremost, [the petitioner]) constantly travel from place to place, from community, not to mention countless TV and Radio shows." Counsel asserts that the employer attestation lists the employer's administrative offices rather than the petitioner's actual workplace because, like an airline pilot or traveling salesperson, the petitioner does not work at any one fixed address. Counsel states: '[redacted] conducts its services in different locations. These locations constantly change." It is plausible that an itinerant minister "would almost never be at the administrative office," as counsel claims, but there remains the question of why no one else – including administrative staff – was there on either of the two occasions when a USCIS officer visited the office.

The petitioner's assertion that [redacted] housed the employer's administrative offices might explain the petitioner's absence from that location during the site visits, but it does not account for the office being entirely closed and locked. The employer attestation indicated that four or more employees worked "at the same location where the beneficiary will be employed." Those employees had both religious and administrative roles, and the petitioner provided no evidence that the employer's entire staff, including administrative personnel and the [redacted] responsible for [redacted] vacant even on days when evangelism events are scheduled the same evening just down the street. That same employer attestation contained no indication that the petitioner "constantly travel[s] from place to place" or that the church "locations constantly change." Instead, it mentioned weddings, daily services, and other elements typically associated with a traditional church.

When the petitioner first filed the petition, the petitioner did not indicate that he was a traveling minister. Instead, he submitted letters discussing his "congregation," whose members numbered in the

"hundreds." A May 17, 2007 letter from stated that the petitioner's duties "include the giving of the holy sacraments, teaching, preaching the word of God, and providing support services for his congregation." needed the petitioner to "continue ministering in our church," and that "[h]is style of ministry has greatly impacted our congregation and our community. . . . Definitely we need him to continue pastoring our congregation at this level." also asserted that approval of the petition would affect "hundreds of lives."

In the July 25, 2007 request for evidence, the director noted claims about "a fast growing congregation," and stated that web site "does not appear to [show] a valid address where the fast growing congregation meets." In the latest motion, counsel asserts that "Petitioner has tried to explain that is a ministry [whose] . . . members (including first and foremost, [the petitioner]) constantly travel from place to place." This passage in the request for evidence presented a direct opportunity for the petitioner to issue just such an explanation, but instead, counsel stated:

> . does not list their physical address on their web site (except for P.O. Box) because this is a Religious Organization that unites Evangelists from all over the World. The Petitioner works in the Church in , but their web site is for believers from everywhere. . . .
>
> has an average of 265 Members. . . .
>
> Included . . . is a detailed daily and weekly schedule for the proffered position indicating the hours spent in each duty.

The above statement contains no mention of frequent travel by the petitioner. Instead, it indicates that he "works in the The accompanying "detailed daily and weekly schedule for the proffered position" appeared in an October 11, 2007 letter from That letter mentioned "Crusades" but also "Sunday morning church services." The "detailed daily and weekly schedule" listed "Pastor's Study" every morning except Sunday, ten radio shows per week, plus a television appearance on Sunday, "Prayer Requests" and "Volunteer/workers classes."

A "Pastoral Schedule" for July 2005 through December 2006 did not list any specific locations. Almost all of the petitioner's scheduled events (including early morning television shows almost every day, but not shown on the "detailed daily and weekly schedule") appear next to the word "Minnesota." The schedule listed a number of "Healing Crusades," mostly in Minnesota and some in Florida (usually followed by commitments in Minnesota the next morning), but these crusades took place in the evenings and would not have affected the petitioner's availability during the day.

The regulation at 8 C.F.R. § 204.5(m)(7)(iii) requires the intending employer to attest to the number of employees who work at the same location where the beneficiary will be employed and a summary of the type of responsibilities of those employees. The attestation in the record indicated that four employees would work at the same location as the petitioner, but identified five different positions:

"Administrative & Management," "Pastoral Care," "Accounting & Data Entry," "Prayer Captain," and "Youth Minister." Although these entries disagreed as to the exact number of employees, they both indicated that the petitioner would not work alone at the

The employer attestation that executed in 2011 indicated that several other employees worked at the same location as the petitioner, and the "[d]etailed description of the alien's proposed daily duties" offered no indication that those duties included significant travel that would keep not only the petitioner, but the office staff, out of the only address shown as the petitioner's workplace. The attestation's "[d]etailed description of the alien's proposed daily duties" reads as follows:

> Preaching sermons to parishioners, directing worship, baptism and weddings and organizing home groups to strengthen the Church body, praying for parishioners and teaching Bible, teaching new Christians how to live a Godly life, TV and Radio shows, worship Services, Sunday morning church services preaching the word of God, Prayer Meetings, leading the people in intercession for the Church, Volunteer Class – training new volunteers with biblical principles and proper attitude needed to work on

The description ends mid-sentence because it overran the space allotted on the electronically-completed form. Only an illegible portion of the next line of text appears on the attestation form.

The denial of the petition rested not on a definitive finding that the petitioner undertakes no religious work. Rather, USCIS was unable to verify the specific claims that the petitioner and his employer previously made regarding that employment; the petitioner's actual employment does not match the descriptions provided.

In February 2013, the petitioner provided his itinerary for January through March 2013, signed by Counsel asserts that USCIS could have verified this information by traveling to an event in late February or March 2013, for which USCIS would have had advance notice. Nevertheless, the itinerary bears little resemblance to previously provided schedules. Counsel asserts that "the Inspector who actually communicated with [the petitioner] and could have inquired with them as to their schedule and visit the actual places of worship," but the petitioner had already provided what purported to be information about his schedule and his place of employment.

Counsel asserts that the petitioner's past motion included new evidence in the form of documentation to show the year in which two of the petitioner's appearances took place, and that the AAO erred in failing to acknowledge that this evidence was new. Counsel states that the AAO's July 2012 decision was the first time any USCIS office questioned the dates on the promotional fliers, and therefore the subsequent motion was the petitioner's first opportunity to submit rebuttal evidence on that point. This issue, however, is tangential to the larger point that, when asked to provide specific information that would enable USCIS to verify the petitioner's claims, the petitioner responded with information that, in fact, did not allow USCIS to conduct a proper compliance review. By identifying only one work location, which the petitioner admittedly "almost never" uses, the compliance review process could not be properly conducted. description of the beneficiary's schedule and itinerary has

evolved significantly over the course of the proceeding, with the most recent information contrasting significantly from the information on which USCIS relied when attempting to verify the petitioner's claims. Compliance review failed to verify the job conditions described on the employer attestation. The petitioner has, in effect, responded by asserting that he works in what is, in many ways, a different job than the one described previously.

The petitioner, on motion, has not shown that the AAO's prior decision rested on an incorrect application of law or USCIS policy, or that the decision was incorrect based on the evidence of record at the time of the initial decision. Therefore, the motion does not meet the requirements of a motion to reconsider, and the regulation at 8 C.F.R. § 103.5(a)(4) requires its dismissal.

The AAO will dismiss the motion for the above stated reasons. 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 motion is dismissed.