U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: JUN 1 0 2013 Office: CALIFORNIA SERVICE CENTER FILE: [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 in accordance with the instructions on 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a combined motion to reopen and motion to reconsider.

The self-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 an , New Jersey. The director determined that the evidence did not establish that the self-petitioner had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition. In its December 18, 2012 decision, the AAO disagreed with a portion of the director's statement of facts, but agreed with the determination that the petitioner failed to establish that he had the requisite qualifying work experience.

On motion, the petitioner submits a brief from counsel and additional evidence to be discussed below.

In the decision dismissing the petitioner's original appeal, the AAO specifically and thoroughly discussed the evidence and determined that the petitioner had not established that he had the requisite two years of continuous qualifying work experience immediately preceding the filing date of the petition. The petitioner filed the petition on October 25, 2011. The AAO found that, although the petitioner's R-1 status during the qualifying period only authorized his employment with he had engaged in unauthorized employment with thereby failing to maintain his R-1 nonimmigrant status. The AAO extensively discussed the evidence submitted by the petitioner regarding the relationship between the two named organizations as well as the petitioner's arguments that they are in fact the same organization operating under different names. The AAO stated, in part:

> Regarding the assertions by counsel and that is merely a former name of the AAO notes that the evidence does not support such assertions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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)). The petitioner has not submitted evidence indicating a name change of either organization. Rather, the evidence submitted indicates that have two distinct employer identification numbers. Further, the vice president of stated: "At the time of [the petitioner's] initial R-1 approval, the name of our congregation was However, the petitioner submitted evidence that was incorporated in April of 2004, while the petitioner was first granted R-1 status in May of 2005.

> Additionally, in response to the Request for Evidence, the petitioner submitted a copy of meeting minutes from March 25, 2011 which include a discussion of the "non-profit status of " with a comment that ' was registered non-profit with the state of NJ only." This suggests the continued existence in 2011 of as a separately registered non-profit organization. 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).

The AAO found that, regardless of any affiliation or shared management between the named R-1 employer and the self-petitioner was not authorized to engage in employment with any affiliated organization or organizational unit without first obtaining authorization through the filing of a separate Form I-129 petition.

The AAO additionally found that the petitioner had not submitted sufficient evidence of continuous, compensated employment during the two years immediately preceding the filing of the petition as required under 8 C.F.R. § 204.5(m)(11). The AAO noted that, although the qualifying period included part of 2009 and all of 2010, the petitioner submitted no evidence of compensation from any employer during either of those years.

On motion, counsel for the petitioner again argues that " are one and the same organization employing Mr. ' Counsel asserts that they are "the same entity under the same management and supervision of ' The petitioner submits two copies of two online articles mentioning the construction of the The first, dated May 20, 2008, states that "the is planning to build" a mosque, and identifies as vice chairman of the center. The second, dated October 10, 2011, states that ' is planning the construction of the and also mentions The petitioner also submits uncertified copies of 2010 and 2011 Forms 990 for ' Counsel argues that the filing of a separate Form I-129 petition was not necessary to authorize the petitioner's employment with as there was "not a material change in employment." The petitioner does not address the AAO's finding that have two distinct employer identification numbers, nor is any explanation provided for the discrepancies noted by the AAO in its discussion of the petitioner's statements regarding the relationship between the organizations. 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. at 591-92.

Counsel alternately argues that the AAO was wrong to consider whether the petitioner engaged in unauthorized employment or failed to maintain lawful nonimmigrant status as "the issue … is outside the scope of the AAO's jurisdiction." In support of this argument, counsel cites an

unpublished decision in which the AAO stated that "issues relating to an individual's lawful maintenance of nonimmigrant status are beyond the scope of the AAO's jurisdiction." The AAO notes that, while 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. Furthermore, the decision cited by counsel related to a petition for classification as an H-1B nonimmigrant. The regulations setting forth the eligibility requirements for such classification do not include requirements that qualifying experience must have been performed in lawful immigration status and must have been authorized under immigration law. *See* 8 C.F.R. § 214.2(h). In contrast, the regulations governing eligibility for classification as a special immigrant religious worker explicitly include both of these requirements. 8 C.F.R. § 204.5(m)(4) and (11). Accordingly, it is necessary and appropriate for the AAO to consider issues of unauthorized employment and lawful status during the relevant qualifying period when evaluating an alien's eligibility as a special immigrant religious worker.

Regarding the AAO's finding that the petitioner failed to submit sufficient evidence of compensation during the qualifying period, the petitioner submits uncertified copies of Employer's Quarterly Federal Tax Returns for 2009 and 2010, uncertified copies of the petitioner's income tax returns for 2009 through 2011, and copies of the petitioner's Forms W-2 for 2010 and 2011.

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]

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. The petitioner'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.

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.

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

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[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).

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 for the petitioner reiterates a prior claim already considered by the AAO in its previous decision, namely that [redacted] are one and the same entity. Counsel additionally states that the AAO was wrong to consider issues of unauthorized employment and lawful status in its decision. However, as discussed above, counsel has not supported this new argument with any relevant legal authority, instead citing a non-precedent AAO decision regarding a case with entirely different eligibility requirements.

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 petitioner 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 December 18, 2012, is affirmed. The petition remains denied.