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

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

Date: OCT 0 3 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 (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
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 for a new decision. The director subsequently denied the petition a second time and certified the matter to the AAO for review. The AAO affirmed the denial of the petition and dismissed a subsequent motion to reopen. The matter is now again 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 temple of the [redacted]. 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 priest. The director initially denied the petition on January 5, 2010, finding that an investigation had discredited some of the documentation submitted in support of the petition. On October 28, 2011, the AAO withdrew the director's decision, finding that the record did not show that any investigation had specifically discredited the petitioner's claims about the beneficiary's employment. The AAO remanded the matter, noting several evidentiary deficiencies that the director had not addressed in her decision. On March 28, 2012, the director again denied the petition, finding that the petitioner had not established that the beneficiary had the requisite two years of continuous, qualifying work experience immediately preceding the filing date of the petition. The director additionally found that the petitioner had not established how it intends to compensate the beneficiary. The AAO, in its October 3, 2012 dismissal, agreed with the director's determinations.

On November 5, 2012, the petitioner filed a motion to reopen the petition. The AAO dismissed the motion on June 4, 2013, finding that the petitioner's filing failed to meet the requirements of a motion to reopen. The AAO found that the petitioner had not submitted any evidence which could be considered "new" under 8 C.F.R. § 103.5(a)(2), and noted that the submitted evidence failed to establish eligibility for the benefit sought.

In support of the instant motions to reopen and reconsider, counsel states the following on the Form I-290B, Notice of Motion:

> Dear Sir or Madam:
>
> 1. 2 years experience of beneficiary prior to filling [sic] I-360. After beneficiary entered on R1 visa in February 2005. He never left country, and maintained always status of minister for religion, and always employed by the same petitioner
> 2. Compensation, the ministers in [redacted] society, dont [sic] accept any salaries or compensations. As they dedicated their life to Lord and services, they live under vows of Poverty. But boarding, food, insurance, airfares to home and other needs are taken care by the petitioner.

Please find extensive documentation from the petitioner (IRS letter for 501 c 3, members list, flyers, utility bills…)
Beneficiary Documents, showing religious vocation, job offer letter, other compensation related.

The petitioner also submits evidence including copies of previously submitted documents. Counsel's assertions and the submitted evidence do not address the AAO's most recently issued decision. Rather, the submissions relate to the eligibility issues discussed in the director's March 28, 2012 decision and the AAO's October 3, 2012 dismissal of the petitioner's appeal. On motion, the AAO will only consider arguments and evidence relating to the grounds underlying the AAO's most recent decision. The petitioner bears the burden of establishing that the June 4, 2013 dismissal for failure to meet the requirements of a motion to reopen was itself in error. If the petitioner can demonstrate that the AAO erred by dismissing that motion, then there would be grounds to reopen or reconsider the proceeding. The petitioner has not claimed or shown that its November 5, 2012 filing met the requirements of a motion to reopen, and the AAO will not therefore consider the petitioner's arguments regarding the underlying decisions to deny the petition and to dismiss the original appeal.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. *See* 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] Counsel asserts on motion that the beneficiary meets the eligibility requirements for classification as a special immigrant religious worker and submits evidence regarding his purported eligibility. However, counsel does not argue or provide any documentary evidence to demonstrate that the petitioner met the requirements of a motion to reopen in its November 5, 2012 filing, or that the AAO erroneously dismissed that motion. A review of counsel's assertions and evidence on motion reveals no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2) and, therefore, such cannot 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 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

[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 NEW COLLEGE DICTIONARY, (3d Ed 2008). (Emphasis in original).

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 cannot be used to raise a legal argument that could have been raised earlier in the proceedings. *See Matter of Medrano*, 20 I&N Dec. 216, 220 (BIA 1990, 1991). Rather, the "additional legal arguments" that may be raised in a motion to reconsider should flow from new law or a *de novo* legal determination reached in its decision that could not have been addressed by the party. Further, 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.

As previously noted, 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. Counsel does not argue or establish in this motion to reconsider that the AAO erred in its June 4, 2013 decision based on the previous factual record, nor does counsel cite authorities which demonstrate error in the AAO's decision. Accordingly, the the motion to reconsider will be dismissed.

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, that burden has not been met.

ORDER: The motion to reopen and the motion to reconsider are dismissed, the decision of the AAO dated June 4, 2013, is affirmed, and the petition remains denied.