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: AUG 20 2014 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, initially approved the employment-based immigrant visa petition on December 12, 2005. On further review, the director determined that the beneficiary was not eligible for the visa preference classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke (NOIR) the approval of the preference visa petition stating the reasons therefore, and subsequently exercised her discretion to revoke the approval of the petition on January 3, 2008. The director granted a subsequent motion to reopen and reaffirmed her decision on November 19, 2008. The petitioner appealed the decision to the Administrative Appeals Office (AAO). We remanded the matter and the director again reaffirmed the revocation and certified the decision to us for review. We affirmed the revocation of the petition and dismissed two subsequent motions to reopen and reconsider. The matter is now before us on a third motion to reconsider.[1] The motion will be dismissed, our previous decision will be affirmed, and the petition will remain denied.

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 (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a religious instructor and religious education director.

In the decision dismissing the petitioner's appeal, we specifically and thoroughly discussed the petitioner's evidence and determined that the petitioner failed to establish that the beneficiary met the eligibility requirements under 8 C.F.R. § 204.5(m)(2005). The director found that the site investigation called into question the actual duties of the proffered position based on the investigating officer's finding that the beneficiary was working as a pianist and music teacher rather than as a religious instructor and religious education director. . The petitioner contended on appeal that the beneficiary's duties as a pianist were secondary to her work as a religious instructor and religious education director, and that a single site visit was not sufficient to provide a proper basis for revoking the petition. However, we found that the petitioner had not submitted sufficient documentary evidence to overcome the findings of the site visit and support the claim that the beneficiary was performing the duties of a religious instructor and religious education director, rather than working as a pianist. 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)).

We dismissed the petitioner's initial motion based on our finding that the petitioner failed to present new facts or specific arguments regarding errors of fact or law, and therefore failed to meet the requirements of a motion to reopen or reconsider. *See* 8 C.F.R. §§ 103.5(a)(2) and (3). In dismissing the petitioner's second motion to reopen and reconsider, we found that the petitioner failed to establish that our dismissal of its initial motion was in error, instead presenting evidence and arguments related to the eligibility issues discussed in the director's

[1] Although the petitioner indicated its intent to file an appeal on the Form I-290, Notice of Appeal or Motion, we do not exercise appellate jurisdiction over our own decisions. We exercise appellate jurisdiction over only the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). *See* DHS Delegation Number 0150.1(effective March 1, 2003). An appeal of our own motion is not properly within our jurisdiction. However, in its brief, the petitioner identifies the instant filing as a motion to reconsider and we will consider it as such.

decision and our decision on appeal. We also found that the petitioner had again failed to present new facts or specific allegations of error supported by pertinent legal arguments.

In support of the instant motion to reconsider, the petitioner submits a brief and copies of previously submitted evidence. The petitioner contends that the evidence of record establishes that the petitioner and beneficiary met all eligibility requirements, and that our "decision solely relying on June 4, 2007 site investigation is erroneous."

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).

As stated in our previous decision on motion, we will only consider arguments and evidence relating to the grounds underlying the most recent decision. The petitioner bears the burden of establishing that our dismissal of its prior motion to reopen and reconsider was in error. In the instant filing, the petitioner does not argue that its previous filing met the requirements of a motion to reopen or reconsider, but instead presents arguments relating to underlying eligibility issues discussed in the revocation of the petition and our dismissal of the subsequent appeal.

The instant 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 or policy that affects our prior decision. Instead, the petitioner generally reiterates prior arguments that we addressed in our decision dismissing the petitioner's appeal. As noted above, a motion to reconsider must include specific allegations as to how we erred as a matter of fact or law in our prior decision, and it must be supported by pertinent legal authority. Because the petitioner has failed to raise such allegations of error, we will dismiss the motion to reconsider.

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).

ORDER: The motion to reconsider is dismissed, the decision of the AAO dated April 1, 2014, is affirmed, and the petition remains denied.