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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

Date: **MAR 31 2014** Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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,

A handwritten signature in cursive script, appearing to read "Ron Rosenberg".

Ron Rosenberg  
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 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 head monk. The director determined 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 also found that the petitioner failed to establish that the petitioner has the ability to compensate the beneficiary and failed to resolve inconsistencies in the record. The AAO, in its August 22, 2012 decision, agreed with the director's findings regarding the petitioner's failure to establish that the beneficiary had the requisite qualifying work experience and its failure to resolve inconsistencies in the record. The AAO withdrew the director's finding with regard to the petitioner's ability to compensate the beneficiary.

The petitioner filed the instant motion to reopen and motion to reconsider on September 24, 2012. Accompanying the Form I-290B, Notice of Appeal or Motion, the petitioner submits a brief from counsel, a Form I-797A, Notice of Action, letters from the former and current presidents of the petitioning organization, a handwritten document entitled "5/8/11 Election Attendance," and copies of documents already in the record.

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 established that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition, and that the petitioner failed to resolve inconsistencies in the record as noted by the director. Regarding the beneficiary's qualifying experience, the AAO found that the petitioner submitted sufficient evidence to demonstrate that it provided the beneficiary with non-salaried compensation including room and board during his employment with the petitioning temple. However, the AAO noted that no documentary evidence was provided to establish that the beneficiary received non-salaried compensation for his employment abroad during the qualifying period as required under 8 C.F.R. § 204.5(m)(11). Additionally, the AAO found that the beneficiary engaged in unauthorized employment and that the petitioner therefore failed to establish that the beneficiary maintained lawful immigration status during the qualifying period.

Regarding the petitioner's failure to resolve inconsistencies in the record, the director noted contradictions in the petitioner's statements and evidence relating to its number of members and the identity of the organization's president on various dates. Counsel argued on appeal that the number of members was a "rough estimate," but the AAO found that no explanation was provided regarding how the petitioner arrived at its estimate, and no documentary evidence was submitted in support of counsel's explanation. The unsupported statements of counsel on appeal or in a motion are not

evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Regarding the petitioning organization's president, counsel indicated on appeal that [REDACTED] was "a legally elected President of the Organization" at the time of filing the petition, but at the time of the petitioner's response to the April 4, 2011 Request for Evidence, the Mr. [REDACTED] term of office was expired and he was replaced by the newly elected president of the temple, Mr. [REDACTED]. The AAO noted that the petitioner had submitted evidence that Mr. [REDACTED] term of office expired on July 31, 2011 and that he signed a document as president on May 14, 2011, while other documents identified Mr. [REDACTED] as the organization's president on May 12, 2011 and May 14, 2011. Accordingly, the AAO agreed with the director's determination that the petitioner failed to resolve these inconsistencies.

On motion, counsel asserts that Mr. [REDACTED] was president at the time of filing and "remained the President of the Temple until his term expired on 7/31/2011." Counsel states that Mr. [REDACTED] was elected president during a board meeting on May 8, 2011 and "Mr. [REDACTED] should have signed any and all documents relating to Temple's affairs as President Elect during the period from May 8th, 2011 – July 31st, 2011." Counsel goes on to assert that both presidents were in a "transitional period" following Mr. [REDACTED] election and that "[REDACTED] President Elect mistakenly signed as President incorrectly." No explanation is provided for the contradiction in counsel's prior statements on appeal. The petitioner submits an attendance list from the May 8, 2011 election, which counsel asserts is "only for the purpose of evidencing that a meeting actually occurred, during which the board members voted to elect [REDACTED] as President." With regard to the petitioner's membership, counsel again asserts that the petitioning temple's permanent membership is 634 members, and that the number of 2,000 is a "rough estimate" which includes visitors to the temple who are not permanent members.

The petitioner does not address the AAO's findings with regard to the petitioner's failure to submit evidence of compensation of the beneficiary's employment abroad during the qualifying period. Instead, counsel's argument focuses only on the claim that the beneficiary was continuously employed by the petitioning temple as his work in Virginia was "under the assignment of his employer." The petitioner submits a letter from the petitioner's former president, Mr. [REDACTED] about the purported assignment.

The petitioner also submits a Form I-797A indicating approval of a Form I-129, Petition for a Nonimmigrant Worker, Receipt # [REDACTED] which was filed by the petitioner on behalf of the beneficiary on September 27, 2011. The notice lists the validity dates for the beneficiary's R-1 nonimmigrant status as December 8, 2011, to December 6, 2013. These dates do not cover the qualifying period for the instant petition. Further, approval of the Form I-129 petition was revoked on August 5, 2013.

On motion, the petitioner again fails to resolve the inconsistencies in the record through documentary evidence and to establish that the beneficiary's employment abroad during the qualifying period was compensated. As the petitioner failed to overcome these issues on motion,

the AAO need not further address the issue of the beneficiary's immigration status or employment authorization during the qualifying period. The motion to reopen will be dismissed.

In the motion to reconsider, the petitioner reiterates some arguments already addressed by the AAO in its dismissal of the original appeal, such as the argument that the petitioner's assertion of 2,000 members was a rough estimate, and that the beneficiary was continuously employed by the petitioning temple during his time in the United States. Counsel additionally argues that the discrepancies regarding the petitioner's president were due to a transitional period following Mr. [REDACTED] election. 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).

The motion to reconsider does not allege that the issues, as determined 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 makes new, unsupported arguments. 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 allegations of error in the motion to reconsider, the motion to reconsider will be dismissed.

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 August 22, 2012, is affirmed, and the petition remains denied.