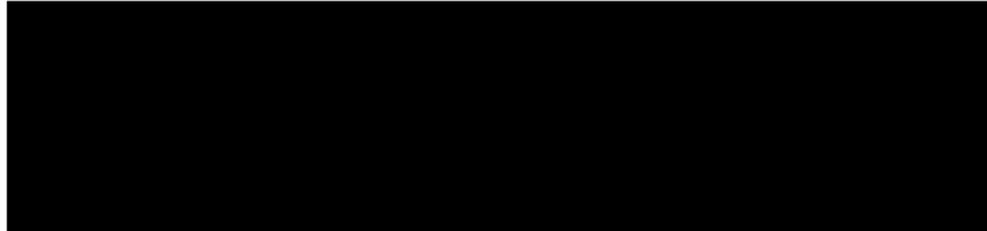


identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy  
**PUBLIC COPY**

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



C1

DATE: **AUG 07 2012**

Office: CALIFORNIA SERVICE CENTER

FILE:

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 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,

Perry Rhew

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 reconsider. The motion will be dismissed, the previous decision of the AAO 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 an assistant pastor.

In order to file a motion properly, the regulation at 8 C.F.R. § 103.5(a)(1)(iii) requires that the motion must be “[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding.” Furthermore, the regulation at 8 C.F.R. § 103.5(a)(4) requires that “[a] motion that does not meet applicable requirements shall be dismissed.” In this case, the petitioner failed to submit a statement regarding if the validity of the decision of the AAO has been or is subject of any judicial proceeding.

Notwithstanding the above, in the decision of the AAO dismissing the petitioner’s original appeal, the AAO found that the petitioner had failed to submit a brief with its appeal as it had indicated that it would, that the petitioner had not specifically addressed the director’s reasons for denial of the petition, that the petitioner had not provided any additional evidence as it had indicated that it would, and that the petitioner had not expressed disagreement with the director’s decision.

On motion, counsel for the petitioner indicates on the Form I-290B, which she filed on March 16, 2012, that she is filing a motion to reconsider and that her brief and/or additional evidence is attached. On Part 3 of the Form I-290B, counsel appears to request that the AAO reexamine the director’s decision rather than the decision at issue in this instance, the AAO’s prior decision. Counsel states:

This motion to reconsider is a request to reexamine the decision in “...light of an argument or aspect of the case which was overlooked”, Matter of Ramos, 23 I&N Dec. 336, 338 (BIA 2002) [quoting Matter of Cerna]; Arias-valencia v. Mukasey, 529 f. 3d 428, 430 n.1

SEE ATTACHED COVER LETTER AND SEVEN EXHIBITS

PLEASE NOTE IN LETTER REFERENCE TO THE [REDACTED]  
LITIGATION [sic]

The petitioner also submits a letter from counsel dated March 12, 2012 and various other pieces of evidence.

The regulation at 8 C.F.R. § 103.5(a)(3) states that “[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 Service 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.”

In counsel’s March 12, 2012 letter, she states that the beneficiary possessed the required two years of continuous, qualifying work experience immediately preceding the filing of the petition, but concedes that the petitioner never submitted a brief following its June 1, 2010 appeal. Counsel asserts that [REDACTED] had previously represented the petitioner and had provided ineffective legal assistance. Counsel states that [REDACTED] firm closed in 2011 due to a conviction of obstruction of justice. Counsel claims that the petitioner is in the process of filing a complaint against [REDACTED] with the Florida Bar due to his sloppy, late, and deficient filings on behalf of the petitioner. Counsel states that [REDACTED] has caused monetary penalties for the petitioner and has disrupted the petitioner’s services that it provides to its parishioners.

Any appeal or motion based upon a claim of ineffective assistance of counsel requires:

- (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard,
- (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and
- (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel’s ethical or legal responsibilities, and if not why not.

*Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff’d*, 857 F.2d 10 (1<sup>st</sup> Cir. 1988). The AAO finds that the petitioner has not submitted this required evidence demonstrating that it received ineffective assistance from prior counsel. Further, the AAO highlights that the petitioner filed the June 1, 2010 appeal, not [REDACTED]

The regulations at 8 C.F.R. §§ 103.3(a)(2)(vi) and (viii) provide that if the brief is not filed at the time the appeal is filed, the petitioner must submit the brief and additional evidence directly to the AAO. On motion, counsel for the petitioner concedes that the petitioner did not submit a brief subsequent to filing the June 1, 2010 appeal.

The AAO finds that counsel for the petitioner has failed to support her reasons for reconsideration with pertinent precedent decisions to establish that the AAO’s February 14, 2012 decision was

based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. The AAO also finds that the petitioner's motion fails to establish that the AAO's February 14, 2012 decision was incorrect based on the evidence of record at the time.

Accordingly, the AAO was not in error when it summarily dismissed the appeal, because the petitioner failed to submit a brief and because there was no evidence of the brief in the record before the AAO. As a result, the motion to reconsider will be denied.

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 is dismissed, the decision of the AAO dated February 14, 2012 is affirmed, and the petition remains denied.