

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: **DEC 19 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 with the field office or service center that originally decided your case by filing a 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 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 a Theravada Buddhist monk. The director 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 date of the petition. The AAO, in its June 20, 2012 dismissal, agreed with the director's determination.

On motion, the petitioner submits a signed statement from the beneficiary regarding his activities from December 29, 2009 to the present, a letter from the petitioner attesting to the beneficiary's employment since January 15, 2010, and copies of pages from the beneficiary's passport.

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. In a Request for Evidence dated April 21, 2011, the petitioner had been instructed to submit experience letters from the beneficiary's current and former employers, written by an authorized official from the specific location at which the experience was gained, providing dates of employment and details about the beneficiary's work. The AAO noted that the petitioner submitted an experience letter on appeal from [REDACTED] in Sri Lanka which attested to the beneficiary's employment from November 3, 2005 to November 10, 2009. However, the AAO found that the petitioner failed to submit evidence to account for the beneficiary's activities between November 10, 2009 and the filing of the petition on October 18, 2010.

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

In a letter submitted in support of the motion, the petitioner asserts that it has employed the beneficiary as a monk since January 15, 2010. The petitioner also submits a statement from the beneficiary which asserts that from December 29, 2009 until his departure for the United States, "I was at home with my family preparing my affairs," and that since his arrival on January 15, 2010, he has been serving as a monk for the petitioning temple. Additionally, the petitioner submits

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).

copies of pages from the beneficiary's passport to confirm travel dates.

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 evidence submitted was previously available and could have been discovered or presented in the previous proceeding. The petitioner's motion is not an opportunity for the petitioner to correct its own defects in the record. *Matter of Soriano* 19 I&N Dec. 764 (BIA 1988), held that a petitioner may be put on notice of evidentiary requirements by regulations, written notice such as a request for additional documentation or a notice of intent to deny, or an oral request at an interview. The petitioner was previously put on notice of the requirements for eligibility by the regulations as well as by the April 21, 2011 Request for Evidence. The evidence could also have been submitted on appeal as the director's decision specified the deficiencies in the petitioner's evidence. Therefore, the evidence submitted on motion will not be considered "new" and will not be considered a proper basis for a motion to reopen. Further, the evidence submitted on motion fails to establish that the beneficiary was employed as a religious worker for the portion of the qualifying period between November 10, 2009 and January 15, 2010.

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.

In the motion to reconsider, the petitioner reiterates a prior argument, namely that the beneficiary has the requisite two years of qualifying experience. 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 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. 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 respondent has failed to raise such 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 June 20, 2012, is affirmed, and the petition remains denied.