

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

[REDACTED]

C<sub>1</sub>

Date: **DEC 19 2012** Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]  
[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 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,

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 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 evangelist. The director determined that the petitioner had not established that the beneficiary had worked continuously in a qualifying religious position for two full years prior to the filing of the petition. The director noted that, although the petitioner asserted the beneficiary had worked as an evangelist, it had not established that the beneficiary was qualified for that position throughout the two years immediately preceding the filing of the petition. The AAO, in its May 11, 2012 dismissal, agreed with the director's determination.

On motion, the petitioner submits a brief from counsel, a letter from the board of trustees of the petitioning church, 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. The AAO discussed discrepancies in the listed requirements for the position as noted by the director, both in letters from the petitioner and in copies of the petitioner's bylaws and amended bylaws. The director had found that the second set of bylaws, amended subsequent to the filing of the petition, appeared to be amended for the sole purpose of establishing eligibility. Counsel argued on appeal that the two sets of bylaws are materially the same, and asserted that the second bylaws are more specific and therefore more restrictive as to the qualifications for the position. Counsel argued that, had the petitioner amended the bylaws to establish eligibility, it would have broadened rather than narrowed the qualifications. The AAO discussed these arguments but found that the petitioner failed to adequately resolve the discrepancies regarding the required qualifications for the position, noting that the requirements described in a letter from the petitioner were contradictory within themselves and entirely different from those contained in the bylaws. Further, the AAO noted that the petitioner's letter indicated that the position requires education beyond a college degree, while the record indicates that the beneficiary held only a Bachelor's degree.

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.<sup>1</sup>

---

<sup>1</sup> 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).

In support of the motion, the petitioner resubmits copies of the beneficiary's credentials. Additionally, in a letter from its board of directors as well as a brief from counsel, the petitioner again asserts that the amendments to its bylaws were for clarification purposes. The petitioner submits no further evidence regarding the requirements for the position and the beneficiary's fulfillment of such requirements. Specifically, the petitioner fails to address any of the AAO's findings regarding the beneficiary's education. Instead, the petitioner offers arguments already presented regarding the petitioner's bylaws and the assertion that the bylaws are materially the same.

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). The petitioner's motion is not an opportunity for the petitioner to correct its own defects in the record. Counsel's arguments on motion are not new facts and the evidence submitted on motion is not "new" and, therefore will not 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.

In the motion to reconsider, the petitioner reiterates arguments already addressed by the AAO in its dismissal of the original appeal, as discussed above. 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. Instead, the petitioner generally reiterates prior arguments. 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 May 11, 2012, is affirmed, and the petition remains denied.