

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]

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Date: **DEC 19 2012** 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 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 synagogue. 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 cantor. The director determined that the petitioner had not established that it qualifies as a bona fide non-profit religious organization in the United States or a bona fide organization which is affiliated with the religious denomination and had not established how it intends to compensate the beneficiary. The director additionally determined that the petitioner had not established that the proffered position qualifies as a religious occupation and that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition. The AAO, in its June 20, 2012 dismissal, agreed with the director's determinations.

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 it qualifies as a bona fide non-profit organization, that it has the ability to compensate the beneficiary, that the proffered position qualifies as a religious occupation, and that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition. Regarding the petitioner's status as a bona fide non-profit organization, the AAO discussed the initial evidence submitted by the petitioner, as well as the evidence submitted in response to the March 9, 2010 and July 12, 2010 Requests for Evidence (RFE). The AAO found this evidence insufficient under 8 C.F.R. § 204.5(m)(8) and thoroughly explained its reasons for finding the evidence deficient. The AAO noted that, although the petitioner submitted evidence of its 501(c)(3) status on appeal, the petitioner had been repeatedly put on notice of the required evidence and failed to submit it. The AAO stated:

[T]he petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

Regarding the petitioner's ability to compensate the beneficiary, the AAO noted that the petitioner submitted no initial evidence regarding how it intends to compensate the beneficiary. In response to the RFE, the petitioner indicated that the position was not currently compensated and submitted evidence of the beneficiary's ability to support himself. The AAO discussed counsel's argument on appeal that the position would be compensated in the future with members of the congregation willing to support the beneficiary. Counsel indicated that notarized letters and a supplemental brief

would be submitted to further address the issue of compensation, but none were submitted. The AAO found that the petitioner had not offered any documentary evidence in support of counsel's assertion that the beneficiary would be compensated. Further, the AAO found that the petitioner failed to submit any Internal Revenue Service documentation or comparable verifiable documentation relating to its ability to compensate the beneficiary as required under 8 C.F.R. § 204.5(m)(10).

Regarding the proffered position, the AAO stated that, in order to qualify as a religious occupation, 8 C.F.R. § 204.5(m)(5)(A) requires that the position "be recognized as a religious occupation within the denomination." The only documentary evidence submitted regarding the denomination's recognition of the position of cantor as a religious occupation was a website printout about Judaism which indicated that many synagogues use volunteer cantors from within the congregation. While the document provided that "larger congregations usually hire a professional chazzan," it went on to state that "[p]rofessional chazzans are ordained clergy" who have "both musical skills and training as a religious leader and educator." The AAO noted that the petitioner did not submit any documentary evidence beyond the assertions of counsel regarding the beneficiary's qualifications and therefore failed to establish that the beneficiary is a professional cantor according to its own description. The AAO agreed with the director that, although the beneficiary's duties are religious in nature, the petitioner had not established that the beneficiary will be employed in a religious occupation.

Finally, regarding the requisite two years of qualifying experience, the AAO found the petitioner's evidence insufficient to establish both the continuity and the qualifying nature of the beneficiary's work during the qualifying period. The AAO also found that the petitioner failed to submit documentary evidence that the beneficiary's work was compensated, as required under 8 C.F.R. § 204.5(m)(11). Additionally, the AAO found that the petitioner failed to establish that the beneficiary's work during the qualifying period was authorized under immigration law.

On motion, the petitioner submits a brief from counsel alleging error in each of the AAO's findings and asserting that the evidence in the record before the AAO established eligibility for the benefit sought. The petitioner submits letters from two officials of the petitioning synagogue, [REDACTED] and [REDACTED] describing the organization as well as the beneficiary's work history and credentials. The petitioner submits a translation of an excerpt from a published calendar to show that [REDACTED] is a trustee of the petitioning organization. The petitioner also submits a letter from the trustees of the petitioning congregation attesting to the financial soundness of the organization and the willingness of the trustees to personally pay the beneficiary's salary in the event that the petitioner is unable to pay. The letter does not specify the amount of the purported salary. The petitioner resubmits its determination letter from the IRS, first submitted on appeal. Additionally, the petitioner submits a letter of recommendation for the beneficiary, a copy of his resume, documents relating to the immigration status of the beneficiary's son and daughter, a copy of the sale contract for a property previously owned by the beneficiary (previously submitted), and a copy of the website printout regarding Judaism (previously submitted). Finally, the petitioner submits unsigned, uncertified copies of the beneficiary's Form 1040 tax returns from 2008 and 2009.

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>

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. *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 March 9, 2010 and July 12, 2010 Requests for Evidence. Furthermore, on motion, the petitioner again fails to establish eligibility for the benefit sought as the evidence submitted fails to satisfy the evidentiary requirements which were thoroughly discussed in the AAO’s June 20, 2012 dismissal. Therefore, the evidence submitted on motion will not be considered “new” and 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.

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<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).

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 June 20, 2012, is affirmed, and the petition remains denied.