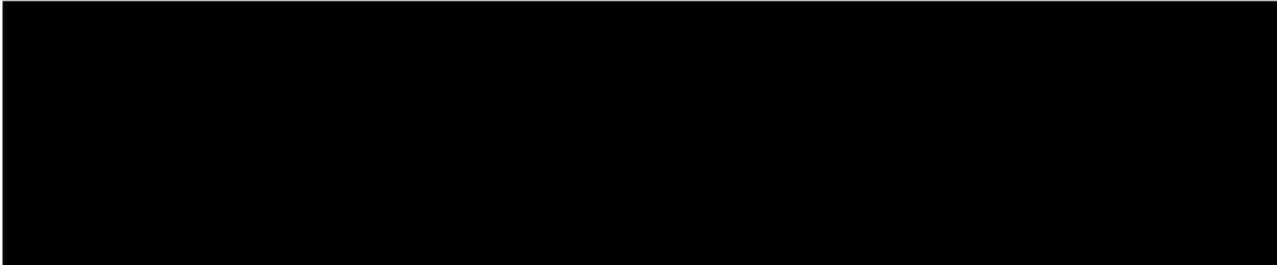




U.S. Citizenship
and Immigration
Services



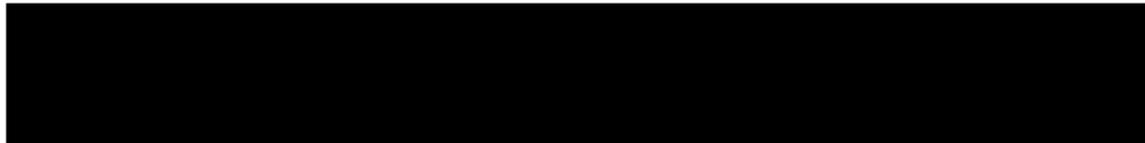
C1

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 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 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 a pastor. 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 May 9, 2012 dismissal, agreed with the director's determination.

On motion, the petitioner submits a letter from counsel and a copy of the AAO's May 9, 2012 dismissal.

In order to properly file a motion, 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 dismissing the petitioner's original appeal, the AAO specifically and thoroughly discussed the petitioner's evidence and determined that the petitioner failed to establish that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition. Specifically, the AAO found that the beneficiary lacked lawful immigration status and employment authorization during the qualifying period. The AAO rejected counsel's argument that the requirement of lawful prior experience for special immigrant religious worker petitions "violates the petitioner's Constitutional rights under the First Amendment." Counsel argued that the lawfulness requirement applies only to religious workers, not to other employment based immigrant petitions, and that it must "receive strict scrutiny to ensure restrictions of religious liberty are narrowly tailored to advance a vital national interest." He asserted that while requiring tax documentation of prior employment "makes sense and is reasonable," the requirement of lawful prior employment "does not serve any important interest and is certainly not narrowly tailored." The AAO cited explicit instructions from Congress to USCIS to "eliminate or reduce fraud" in the religious worker context. Pub. L. No. 110-391 (Oct. 10, 2008). Further, the AAO cited USCIS' explanation of how the lawfulness requirement serves the national interest of reducing immigration fraud in the religious worker context and concluded that the director properly applied the requirement in denying the petition.

In the motion to reconsider, counsel reiterates an argument already addressed by the AAO in its dismissal of the original appeal, namely, that the requirement of lawful prior experience should not be applied. 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, counsel generally reiterates his prior argument that regulations impeding the free exercise of religion must be narrowly tailored, now citing the Religious Freedom Restoration Act of 1993 (RFRA), Pub. L. No. 103-141, 107 Stat. 1488 (November 16, 1993). The RFRA seeks to prevent the government from unnecessarily impeding the free exercise of religion. Although the instant regulations apply to immigrant petitions for religious workers, the AAO notes that the petitioner has not actually set forth in what ways the instant regulations impede on its free exercise of religion. USCIS anticipated this argument in the preamble to the latest version of the religious worker regulations:

USCIS disagrees with the specific notion that the final rule violates the RFRA. The RFRA provides:

Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except * * * if it demonstrates that application of the burden to the person—

- (1) is in furtherance of a compelling governmental interest; and
- (2) is the least restrictive means of furthering that compelling governmental interest.

Public Law 103-141, sec. 3, 42 U.S.C. 2000bb-1. The final rule is intended to permit religious organizations to petition for admission of religious workers under restrictions that have less than a substantial impact on the individual's or an organization's exercise of religion. A petitioner's rights under RFRA are not impaired unless the organization can establish that a specific provision of the rule imposes a significant burden on the organization's religious beliefs or exercise. Further, this rule is not the sole means by which an organization or individual may obtain admission to the United States for religious purposes, and DHS believes that the regulation, and other provisions of the INA and implementing

regulations, can be administered within the confines of the RFRA. An organization or individual who believes that the RFRA may require specific relief from any provision of this regulation may assert such a claim at the time they petition for benefits under the regulation.

Nor does this final rule impose a “categorical bar” to any religious organization’s petition for a visa or alien’s application for admission. Instead, the rule sets forth the evidentiary standards by which USCIS will adjudicate nonimmigrant and immigrant petitions.

73 Fed. Reg. 72276, 72283-84 (November 26, 2008). With respect to the provision that “[a]n organization or individual who believes that the RFRA may require specific relief from any provision of this regulation may assert such a claim at the time they petition for benefits under the regulation,” we note that the petitioner raised no RFRA concerns until the appellate stage. Also, the above language does not require USCIS to comply with every request for relief under RFRA.

Counsel also argues that the AAO failed to address his purported contention on appeal that other requirements contained in 8 C.F.R. § 204.5 sufficiently protect against fraud rendering the lawfulness requirement unnecessary and his purported contention on appeal “that the newly enacted two year status requirement was not narrowly tailored, since they [sic] only apply to religious organizations.”

The AAO finds that its May 9, 2012 dismissal sufficiently addressed counsel’s arguments as expressed on appeal. 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 sufficiently support 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 reconsider is dismissed, the decision of the AAO dated May 9, 2012, is affirmed, and the petition remains denied.