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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: **FEB 15 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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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, (the director) denied the employment-based immigrant visa petition on February 23, 2009. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal of that decision on February 23, 2010. The matter is now before the AAO on a motion to reconsider. The motion to reconsider will be denied.

First, in order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C) 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." 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.

Second, 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." A motion to reconsider cannot be used to raise a legal argument that could have been raised earlier in the proceedings. Rather, the "additional legal arguments" that may be raised in a motion to reconsider should flow from new law or a de novo legal determination reached in its decision that may not have been addressed by the party. Further, a motion to reconsider is not a process by which a party may generally allege error in the prior decision. 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. *See Matter of Medrano*, 20 I&N Dec. 216, 219 (BIA 1990, 1991).

In the present case, the petitioner fails to meet these requirements. Initially, the petitioner does not support its arguments with any precedent decisions to establish that the decision was incorrect based on an incorrect application of law or policy. Further, although the petitioner argues that there were issues that were decided in error and that there were issues overlooked in the AAO's decision, a review of that decision shows no error on the part of the AAO.

The petitioner first argues that the AAO had decided in error that the beneficiary did not have two years of lawful immigration status in the United States. In the Form I-290B, the petitioner's counsel argues, "Petitioner asserts that the Beneficiary was in lawful immigration status from 1/20/2002 date of filing his I-485 until 6/20/2006 date of denial decision notice issued by Service for this case I485 [sic] application, showing Beneficiary had been working in a qualifying religious occupation, continuously for at least a two-year period preceding the filing I360 petition [sic] (July 2004-June 2006)." The AAO is not persuaded by this argument. In the dismissal of the petitioner's appeal, the AAO wrote:

... the petitioner must show that the beneficiary had been working in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously for at least the two year period **immediately** preceding the filing of the petition. The petition was filed on **October 15, 2008**. **Accordingly,**

the petitioner must establish that the beneficiary had been continuously employed in qualifying religious work throughout the two-year period immediately preceding that date (Emphasis added).

The argument that was raised by counsel fails to meet the standard of a motion to reconsider. The AAO argued that the petitioner was not continuously employed in qualifying religious work throughout the two-year period immediately preceding that date. In other words, the AAO specifically explained that the period of lawful employment has to be immediately before the filing of the petition. The Form I-360 was filed on October 15, 2008, so the petitioner would have had to show that the evidence demonstrated that lawful status from October 15, 2006 to October 15, 2008. The only argument that the petitioner raises regarding the AAO's finding of unauthorized employment is that the AAO failed to consider the fact that the petitioner had two years of lawful status from 2004 to 2006, which is irrelevant.

Further, the petitioner argues that the AAO had overlooked evidence in its decision. The petitioner states in the Form I-290B, "Concerning Service's statement that 'the petitioner has therefore failed to provide documentation to establish how it will compensate the beneficiary,' the petitioner alleges that as attachments to the original submission of I-360 Petition were included the Job Offer, Petitioner's account statements and irrevocable documentary evidence in support of remuneration payments made to [REDACTED] corresponding to the years 2006, 2007 and 2008." However, in its decision, the AAO acknowledged these documents specifically. The AAO wrote:

The petitioner provided copies of Forms W-2 that it issued to the beneficiary in 2006 and 2007, indicating that it paid the beneficiary \$5,200. The petitioner also provided a consolidated income and expense statement for 2007, and a combined income and expense report for the years 2005 through 2007. The petitioner's documentation does not include evidence that it has previously compensated the beneficiary or anyone in a similar position in the amount it states it will pay the beneficiary, has not provided a budget showing that it has set aside money to compensate the beneficiary, and has not provided any of the other documentation specified in the above cited regulation. The petitioner has therefore failed to provide documentation to establish how it will compensate the beneficiary.

The petitioner here quotes the AAO's concluding sentence alone, which standing by itself would seem as though the AAO was in error by not considering all of the financial documents submitted by the petitioner. However, when the final sentence is read in the context of the entire paragraph, it is clear that the AAO considered and acknowledged the financial documents submitted by the petitioner. The conclusion, in the context of the entire paragraph, means that the financial documents submitted by the petitioner were not sufficient to show that the petitioner had the ability to compensate the beneficiary. Therefore, the petitioner failed to meet the burden required in this motion to reconsider by failing to establish that the AAO did not correctly apply the regulations and that the AAO overlooked evidence in this proceeding.

The regulation at 8 C.F.R. § 103.5(a)(4) states that “[a] motion that does not meet applicable requirements shall be dismissed.” Accordingly, the motion will be dismissed, the proceedings will not be reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

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 AAO’s February 23, 2010 decision is affirmed, and the petition remains denied.