

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



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Date: **OCT 17 2012**

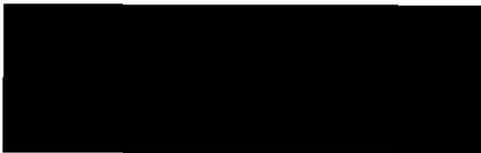
Office: NEBRASKA SERVICE CENTER

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, 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, initially approved the employment-based immigrant visa petition. On further review, the director determined that the petitioner was not eligible for the visa preference classification. Accordingly, after notifying the petitioner of her intent to revoke approval of the petition and her reasons for doing so, the director subsequently exercised her discretion to revoke approval of the petition on January 18, 2008. On December 16, 2008, the Administrative Appeals Office (AAO) remanded the matter for consideration under new regulations. The director again denied the petition and, following the AAO's instructions, certified the decision to the AAO for review. The AAO affirmed the director's January 18, 2008 decision. The petitioner moved the AAO to reopen and reconsider its decision. The AAO granted the motions and affirmed its prior decision. The matter is now before the AAO on a second motion to reopen and reconsider. The motions will be dismissed.

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 religious instructor and pastor assistant. The AAO affirmed the director's decision that the petitioner had failed to establish that the duties of the proffered position relate to a traditional religious function and that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the petition.

Through counsel, the petitioner asserts on motion that "the evidentiary inconsistency noted by the USCIS was a [sic] anomalous mishap, and is proven as such by the overwhelming evidence submitted by the petitioner." In support of the motion, counsel submits a brief and copies of church bulletins, in addition to copies of previously submitted documentation.

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

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 was submitted or could have been discovered or presented in the previous proceedings. The petitioner's motion is not an opportunity for the petitioner to correct its own defects in the record.

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.

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).

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 Services (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).

In its motion to reconsider, the petitioner reiterates the same arguments made in its previous motion and on appeal. Counsel also asserts that the petitioner submitted documentation in the form of a letter from the [REDACTED] that outlines the prerequisites of the position as “a leader who has the needed requirement and experience to mentor people spiritually and mentally.” In its previous decision, the AAO found the stated requirements of the position vague as it offers no specifics as to the qualifications for the job. On motion, counsel asserts:

Therefore, it is clear that the position of Religious Instructor and Pastor Assistant is one recognized within the denomination, **AND** one that has attained specified requirements and experience. Additionally, notwithstanding the USCIS’ broad contentions, the specified denominational evidentiary requirement to communicate normally required experience and qualifications stray beyond requisite statutory bounds. Nowhere in the statutory language of 8 C.F.R. §204.5(m) does it require a denominational evidentiary showing of requirements for such a particular religious occupation. Moreover, the statutory language “traditional religious function,” as stated in the Denial required only a demonstration that the duties of the position were related to the religious creed of the denomination, and that it was recognized by the governing body, and was traditionally a permanent and full time salaried occupation Nowhere in the statutory or USCIS’ adjudicative history does it require the submission of requirements of experience. [Bold emphasis in the original.]

Counsel’s argument is not persuasive. Not all documentation requested by USCIS must be specifically set forth in the statute or regulations. USCIS is tasked with administering the immigration laws effectively and accurately, consistent with the intent of Congress, to ensure that only those who are qualified for immigration benefits receive them. The requests for additional evidence are sometimes governed by the credibility of documentation previously submitted. In the instant case, the unresolved inconsistencies in the petitioner’s evidence, the petitioner’s history of hiring pastor assistants (at least 11), and the simple statement that the position is defined as a leader with the “needed requirements and experience” beg the question of the exact nature and responsibilities of the proffered position. As noted in the AAO’s previous decision, the certificate from the [REDACTED] verifying the position as a religious occupation states that its rules and regulations define the position. The petitioner has, however, submitted no documentary evidence of those rules or regulations. An organization may title a position in any way it chooses, for example a minister, religious instructor, or pastor assistant. The title of the position alone does not establish that the position is a religious occupation within the meaning of the regulation. While the determination of an individual’s status or duties within a religious organization is not under USCIS’s purview, the determination as to the individual’s qualifications to receive benefits under the immigration laws of the United States rests with USCIS. Authority over

the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

Counsel asserts that the AAO failed to consider that the beneficiary worked on a part-time basis as evidenced by the "Certificate of Salary" from the [REDACTED] in South Korea. The copy of the certificate submitted on motion indicates that the beneficiary was paid \$300 per month for his part-time work as an instructor and pastor assistant. A certificate from the church previously submitted by the petitioner does not contain this provision. This inconsistency in the evidence demonstrates the need for a closer scrutiny of the petitioner's evidence.

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 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 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 submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging 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 this case, the petitioner failed to support the motion with any legal argument or precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. The motion to reconsider will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. 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.

ORDER: The motion is dismissed.