

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]

C1

Date: OCT 22 2017

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:

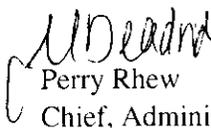
[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry 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,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) remanded the matter to the director for consideration under new regulations. The director again denied the petition and certified the decision to the AAO for review. The AAO affirmed the director's certified decision. 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 Catholic archdiocese. 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 programmer and Eucharistic minister. The AAO, in its April 26, 2012 decision, determined that the petitioner had not established that the position offered to the beneficiary qualifies as a religious occupation.

On motion, the petitioner submits a brief from counsel, a letter from the petitioner, printouts from the website of the United States Conference of Catholic Bishops regarding the use of communication technologies, a copy of "Message of the Holy Father Benedict XVI for the 43rd World Communications Day: New Technologies, New Relationships. Promoting a Culture of Respect, Dialogue and Friendship," a copy of an Apostolic letter from [REDACTED] regarding the use of mass media to spread the gospel, a job description for the position of "Manager/programmer of TV Stations," and a document entitled "Regulations and Cases Concerning Secular Work and Religious Occupation."

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 proffered position qualifies a religious occupation as defined by the regulation at 8 C.F.R. § 204.5(m)(5). The AAO discussed counsel's arguments that the beneficiary's role as a religious programmer relates traditional religious function of spreading the gospel through communication and that the regulations allow for limited administrative duties. However, the AAO concluded that the conflicting descriptions and evidence submitted by the petitioner regarding the beneficiary's specific duties as religious programmer did not constitute persuasive evidence that his duties would be primarily religious rather than secular in nature. The AAO also discussed counsel's assertion that, although the role of a Eucharistic minister is a volunteer position in some churches, the beneficiary's duties as a Eucharistic minister go beyond what could be expected of a volunteer. However, the AAO found that the petitioner failed to

submit evidence to establish that the position of Eucharistic minister is recognized as a compensated occupation within the Catholic denomination.

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>

On motion, the petitioner submits additional materials relating to the use of mass media by the Catholic church and an additional job description and letter from the petitioner attesting to the religious nature of the beneficiary’s duties. The letter from the petitioner also asserts that “[while some parishes may consider the position of Eucharistic Minister as a volunteer position, and not compensate an Eucharistic Minister, the Diocese of St. Thomas does compensate that position since his duties go beyond what would be required of a volunteer.”

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. The evidence could also have been submitted on certification. 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. 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).

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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).

A motion to reconsider cannot be used to raise a legal argument that could have been raised earlier in the proceedings. *See Matter of Medrano*, 20 I&N Dec. 216, 220 (BIA 1990, 1991). 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 could 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. *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.

On motion, counsel argues that the AAO erred in its interpretation of the regulation at 8 C.F.R. § 204.5(m)(5) which, in part, defines religious occupation as allowing for limited administrative duties. In support of her argument, counsel cites *Camphill Soltane v. US Department of Justice*, 381 F.3d 143 (3d Cir. 2004), in which the court found that a religious occupation could include both secular and religious components, and that the position of house-parent, music instructor and religious teacher of mentally challenged youth at a religious charitable home met the definition of a religious occupation. The case cited by counsel predates the current regulations, which were published on November 26, 2008. Accordingly, the court’s interpretation applied to regulations which are no longer in effect and not relevant to the instant case. Counsel also refers to a 2006 decision in which “the AAO ruled that the director and doctor of a Christian Medical Mission, where 65% of his duties involved direct patient care, was a religious occupation.” The AAO again notes that this decision would have pertained to interpretations of the previous regulations which are no longer in effect. Further, counsel has not sufficiently identified the referenced AAO decision to establish that it is a precedent decision. While 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. The AAO further notes that, in its April 26, 2012 decision, it did not find that the beneficiary’s role could not include any secular duties under the current regulations. Rather the AAO found that the petitioner had not established that the beneficiary’s duties as Eucharistic minister would be “primarily” religious in nature.

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 petitioner has failed to support such allegations of error in this motion to reconsider by pertinent legal authority, 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 April 26, 2012, is affirmed, and the petition remains denied.