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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: SEP 27 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:

SELF-REPRESENTED

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
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The petitioner filed a subsequent appeal. The Administrative Appeals Office (AAO) dismissed the appeal. The matter is now before the AAO on a motion to reopen and a motion to reconsider. The motions will be dismissed.

The self-represented petitioner is a church.¹ 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 of African ministries. The AAO, in its April 3, 2012 decision, 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.

On the Form I-290B, Notice of Appeal or Motion, counsel states:

Once [the beneficiary's] work authorization expired he continued many of his duties for the Church on a volunteer basis. He continued to live in the housing provided by the church, the church paid for the housing including payment for the electric.

Therefore, [the beneficiary] continued to be employed for much of the three [sic] year period immediately proceeding [sic] the filing of his I-360.

In a letter accompanying the Form I-290B, counsel stated the following:

Please note that Counsel was out of the Country and office until May 1, 2012 without a means of communication. Therefore Counsel is requesting that the filing be accepted pursuant to the 33 day rule for filing when the Denial was sent by regular mail.

Counsel is also request [sic] 30 days in which to submit a brief and additional evidence showing that [redacted] continued work was as a volunteer who was receiving housing and utility payments qualifies as employment.

No further argument or legal grounds were provided to support either motion on the Form I-290B, nor was the purportedly forthcoming evidence identified to support the motions. The record indicates that no brief or additional evidence has been received to date.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.3(a)(2)(vii) allows for limited circumstances in which a petitioner can supplement an already-submitted appeal. This regulation, however, applies only to appeals, and not to motions to reopen or reconsider. There

¹ While the AAO sent a copy of its previous decision to the petitioner's attorney, the record does not contain a new Form G-28, Notice of Appearance as Attorney or Representative signed by the petitioner. Thus, the AAO considers the petitioner self-represented. The AAO also notes that the Form I-290B, Notice of Appeal or Motion was signed by the [redacted]. Accordingly, the motions are alternately dismissed for lack of standing.

is no analogous regulation which allows a party to submit new evidence in furtherance of a previously-filed motion.

Similarly, the instructions to the Form I-290B provide that unlike appeals, motions may not be supplemented and specifically state that all evidence “must be submitted with the motion.” The Form I-290B itself contains six boxes, one of which the petitioner must check to indicate whether the petitioner is filing an appeal or motion. Of the three boxes that pertain to motions, all indicate that the brief and/or additional evidence is “attached” to the motion. The form contains no provision for the submission of briefs or evidence after the filing of the motion. Pursuant to the regulation at 8 C.F.R. § 103.2(a)(1), every benefit request must be executed and filed in accordance with form instructions which are incorporated into the regulation.

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. According to 8 C.F.R. § 103.5(a)(3), 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. The plain language of each regulation makes clear that submission of the supporting material and a legal basis for the motion is mandatory, not permissible. This language, combined with the form instructions and the form, explicitly require the motion to reopen and reconsider to be supported at the time of filing.

The motion to reopen is unsupported by documentary evidence that demonstrates new facts to be considered. Counsel’s claims regarding the beneficiary’s continuation as a volunteer and receipt of housing by the church are not supported by documentary evidence. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Similarly, the motion to reconsider is devoid of any legal argument that demonstrates error on the part of the AAO in its prior decision.

Accordingly, the motion does not meet the regulatory requirements of a motion to reopen or reconsider.

ORDER: The motion to reopen and the motion to reconsider are dismissed, the decision of the AAO dated April 3, 2012 is affirmed, and the petition remains denied.