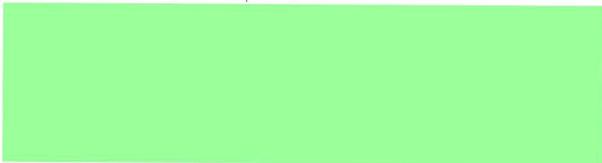


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U.S. Citizenship
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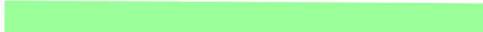


Date: **APR 03 2013**

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) remanded the matter to the director for consideration under new regulations. The director again denied the petition and the AAO dismissed a subsequent appeal. 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 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 director also found that the petitioner had not responded to issues raised in the Notice of Intent to Deny. Additionally, the director found that the petitioner failed to establish how it intends to compensate the beneficiary. The AAO, in its August 27, 2012 decision, agreed with the director's determinations.

On motion, the petitioner submits a letter from the petitioner, uncertified copies of the petitioner's Form 990 tax returns for the years 2007 through 2011, a list of the petitioner's ordination requirements, an ordination application, a bank account statement, and a mortgage loan statement.

In the decision dismissing the petitioner's original appeal, the AAO specifically and thoroughly discussed the petitioner's evidence and determined that the petitioner had not established eligibility for the benefit sought, in part based on the petitioner's failure to establish that the beneficiary had the requisite two years of continuous qualifying work experience immediately preceding the filing of the petition. The AAO agreed with the director's finding that the beneficiary lacked lawful status and employment authorization during the qualifying period, and found unpersuasive counsel's argument on appeal that the beneficiary was protected under the *Ruiz-Diaz* litigation, referring to *Ruiz-Diaz v. United States of America*, No. C07-1881RSL (W.D. Wash. June 11, 2009). The AAO also noted unresolved discrepancies in the beneficiary's employers and employment dates as indicated in the petitioner's evidence, as well as inconsistencies in the IRS documentation submitted. Additionally, the AAO noted that the petitioner claimed the beneficiary worked as a volunteer during the qualifying period, but also submitted copies of petty cash forms and an affidavit from a congregation member as purported evidence of salaried and non-salaried compensation provided to the beneficiary during the same period. The AAO found that volunteer work is not qualifying experience, and that the petitioner's evidence of prior compensation was not sufficient under the regulation at 8 C.F.R. § 204.5(m)(11). The AAO also found that, while the beneficiary was purportedly employed abroad for some of the qualifying period, the petitioner failed to submit evidence of compensation received for such work.

In its decision, the AAO additionally agreed with the director that the petitioner failed to resolve inconsistencies regarding its requirements for ordination and to establish that the beneficiary qualified as a minister at the time of filing. The AAO noted that, although the petitioner submitted evidence that it requires completion of ordination training classes and the submission of a

completed ordination application, no evidence was submitted to demonstrate that the beneficiary met those requirements. The director had also discussed the several ordination certificates submitted by the petitioner showing various dates on which the beneficiary was purportedly ordained in different locations. The AAO discussed the petitioner's assertion that it requires ordination for each jurisdiction in which a pastor will serve, but noted that the petition was filed on April 23, 2007 while the beneficiary's ordination certificate for the relevant "New Jersey territory" was not issued until April 29, 2007.

Finally, the AAO agreed with the director's determination that the petitioner failed to establish its ability to compensate the beneficiary. The AAO noted that the petitioner indicated at the time of filing that it would provide board, lodging and transportation to the beneficiary in addition to monetary compensation. On appeal, the petitioner submitted an affidavit from a member of its congregation, [REDACTED], in which he stated that he owns a property at [REDACTED] in Bergenfield, New Jersey, and provides free room and board to the beneficiary at that location. The AAO found that the petitioner did not submit any evidence to show that [REDACTED] owns the property at that address or that the beneficiary has ever resided there. Additionally, the AAO found that compensation provided to the beneficiary by a member of the congregation does not meet the requirements that the petitioner submit verifiable evidence of its own intent and ability to compensate the beneficiary under 8 C.F.R. §§ 204.5(m)(7)(xi), (xii), and (10).

On motion, the petitioner again asserts that the beneficiary was working continuously as a minister for more than the two years preceding the filing of the petition, both in the United States and abroad. The petitioner again mentions the *Ruiz-Diaz* litigation, but otherwise fails to address the finding that the beneficiary lacked lawful immigration status and employment authorization during the qualifying period. The petitioner attempts to clarify some of the inconsistencies regarding the beneficiary's employers and dates of employment, but provides no explanation for the discrepancies in its previous statements and provides no documentary evidence in support of its assertions on motion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The petitioner retracts its description of the beneficiary as a "volunteer" during the qualifying period and instead asserts that he was compensated.

Regarding the beneficiary's ordination, the petitioner asserts on motion that the beneficiary was fully ordained upon receiving a "Certificate of Ordination" from [REDACTED] and [REDACTED] on April 8, 2001, and that "a pastor/minister of the Gospel can be ordained as many as they want." The AAO notes that this statement conflicts with the petitioner's previous assertion that a minister must be specifically ordained for each jurisdiction. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner submits a list of its ordination requirements as well as a completed Ordination Application, both signed by the petitioner on April 1, 2007.

With regard to the ability to compensate the beneficiary, the petitioner submits copies of its Form 990 tax returns from 2007 to 2011. Additionally, as evidence of [REDACTED] purported ownership of the property at [REDACTED], the petitioner submits a bank account statement addressed to [REDACTED] and [REDACTED] at that address, as well as a copy of a mortgage loan statement addressed only to [REDACTED] at that address. The petitioner does not address the AAO's finding that compensation by a congregation member is not sufficient under the regulations.

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 of the evidence submitted on motion was previously available and could have been provided on appeal. The petitioner's motion is not an opportunity for the petitioner to correct its own defects in the record. The petitioner's arguments on motion are not new facts and the evidence submitted on motion is not "new" and, therefore 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 prior arguments and attempts to provide unsupported explanations for previous inconsistencies in the evidence submitted. 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.

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).

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, the petitioner generally reiterates prior arguments. 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 raise 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 reopen and the motion to reconsider are dismissed, the decision of the AAO dated August 27, 2012, is affirmed, and the petition remains denied.