



**U.S. Citizenship  
and Immigration  
Services**

(b)(6)

[Redacted]

Date: **APR 17 2013** 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:**  
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, initially approved the employment-based immigrant visa petition on June 5, 2006. On further review, the director determined that the beneficiary was not eligible for the visa preference classification. Accordingly, the director properly served the petitioner with Notices of Intent to Revoke (NOIR) the approval of the preference visa petition stating the reasons therefore and subsequently exercised her discretion to revoke the approval of the petition on August 7, 2008. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO remanded the matter to the California Service Center 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 revoked.

The petitioner is a Buddhist temple. 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 an evangelist. The director determined that the petitioner had not established that it had extended a qualifying job offer to the beneficiary, that it had the ability to pay the beneficiary the proffered wage, and that the beneficiary had been continuously engaged in a qualifying religious position for a bona fide nonprofit religious organization during the two years immediately preceding the filing of the petition. The AAO, in its November 19, 2012 decision, withdrew the director's finding regarding the qualifying job offer, but upheld the remaining grounds for denial.

On motion, the petitioner submits a brief from counsel and copies of documents already in the record.

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 beneficiary meets the eligibility requirements under 8 C.F.R. § 204.5(m)(1)(2006). With regard to the issue of compensation, the AAO considered counsel's argument that the petitioner provided evidence of past payment of compensation. The AAO acknowledged that the evidence submitted by the petitioner showed past payment of \$21,600 to the beneficiary, but stated the following:

While these past payments may ordinarily establish that the petitioner has the ability to pay the beneficiary, the bank statements provided by the petitioner show that in each month, it overdraw its account. While the overdrafts appear small, they establish a trend. When a job offer is the basis for immigration, there must be a high degree of certainty that the employment will not end, or be modified because the employer is no longer able to meet the terms agreed upon in the job offer. It must be established, with some degree of certainty that the petitioner is viable to the point where the beneficiary's employment will not end or change because the petitioner is unable to meet the terms. In the instant case, the petitioner has not satisfactorily demonstrated that it has the continued ability to pay the beneficiary at least \$1,800 per month. As the petitioner's expenses habitually exceed its monthly income, there

is not a high degree of certainty that the petitioner can continue to pay the beneficiary the established wage until he obtains permanent residence status.

The AAO also thoroughly discussed the petitioner's evidence regarding the beneficiary's religious work during the two years immediately preceding the filing date of the petition and the petitioner's operation as a bona fide religious organization. The AAO found the evidence insufficient to establish that the petitioner was operating as claimed in its petition and additionally found that the petitioner submitted "no verifiable documentation of [the beneficiary's] actual work for the petitioning organization." The petitioner had submitted evidence regarding various locations from which the petitioning organization purportedly operated during specific periods, and asserted that the beneficiary's duties included conducting home visits to congregants and evangelizing at the temple during weekly Sunday services. Regarding one of the petitioner's purported temple locations, in [REDACTED], the AAO noted that the lease for that property stipulated that it was to be used as a personal residence for the petitioner's priest and his wife, and that the only documentation to show religious activities at that location consisted of "summary translations" of advertisements which did not comply with the provisions of 8 C.F.R. § 103.2(b)(3) concerning translated documents. The petitioner provided a 2008 letter from [REDACTED] president of [REDACTED] a Buddhist organization, who stated that the beneficiary joined the organization in 2003 and worked in [REDACTED], another of the petitioner's purported locations. The AAO disagreed with the director's statement that the lease for the [REDACTED] property limited its use to a personal residence, but stated the following:

The petitioner claims that it used this property from August 2007 to June 2008, although the [investigating officer (IO)] was unable to verify its use as a temple during his visit on October 18, 2007. While the beneficiary claims the IO must have visited the wrong address, the petitioner submitted no documentation other than photographs allegedly of the property. The photographs are undated, contain no evidence of an address, and therefore do not establish the petitioner's use of the premises as a temple.

The AAO also noted that, although the petitioner submitted a summary translation of its membership roster listing 672 names, the evidence does not establish that the petitioner "has or has ever had the facilities to minister to 672 members or any fraction of that amount that may attend Sunday service."

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>

---

<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 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 submitted or was previously available and could have been provided in response to the notice of certification. The petitioner’s motion is not an opportunity for the petitioner to correct its own defects in the record. Counsel’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.

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 the motion to reconsider, counsel for the petitioner argues that the AAO “instituted an overly stringent analysis of the case.” Counsel states:

In utilizing a proper “preponderance of the evidence” burden of proof on the Petitioner, the AAO should have ruled the voluminous record contains sufficient evidence proving in a clear manner, each of the following: i) Petitioner’s ability to pay the Beneficiary, and ii) Beneficiary’s worked two years prior to petitioning date for a bona fide religious institution according to the prior permutation of 8 C.F.R. § 204.5(m). Thereby, we urge the AAO to reconsider the instant Denial, in light of the overwhelming evidence submitted addressing the issued posed by the USCIS.

Counsel notes the petitioner’s “submission of many cogent evidence ... which has accompanied five (5) written submissions ... during a period in excess of six (6) years.”

Regarding the issue of compensation, counsel reiterates an argument made on appeal, namely that the petitioner’s evidence of past payment establishes that the petitioner has the ability to pay the beneficiary. Counsel provides no evidence or explanation regarding the overdrafts of its bank accounts as noted by the AAO, instead arguing that the bank statements are of “tenuous and circumstantial relevance.” Counsel provides no further explanation as to why the petitioner’s bank statements are not wholly relevant to its ability to compensate the beneficiary. Counsel argues that USCIS should “consider the totality of the circumstances affecting the petitioner,” citing *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg’l Comm’r 1967) and *Matter of Great Wall*, 16 I&N Dec. 142

(Acting Reg'l Comm'r 1977). In *Matter of Sonogawa*, the regional commissioner found that an employer could establish its ability to pay by demonstrating a reasonable expectation of future financial growth. The petitioner has not demonstrated such an expectation in this case. Instead, the AAO found that the evidence demonstrates a "trend" of spending in excess of the petitioner's monthly income.

With regard to the beneficiary's qualifying religious work for a bona fide religious organization, counsel argues that "the totality of evidence depicts, by a preponderance of the evidence, the bona fides of Petitioner," and that the beneficiary worked in a religious capacity during the two years preceding the filing of the petition. Counsel lists the various documents submitted, noting the photographs and the translated advertisement as evidence of religious activity, and states that the leases establish that the petitioner had "places of worship throughout the time period of Beneficiary's employment." The petitioner does not address the AAO's findings regarding the limited probative value of the photographs and translation, or the finding that the lease for one of the properties specifically stated that it was for residential use only.

Counsel is correct that the petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The "preponderance of evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, USCIS must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. The AAO, in its November 19, 2012 decision, appropriately considered all of the petitioner's evidence according to the correct standard of review. The AAO explained its findings regarding the relevance, probative value, and credibility of the documentation submitted, and concluded that the totality of the evidence did not establish eligibility for the benefit sought.

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.

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 argues that the AAO was overly stringent in its analysis and generally reiterates prior arguments. As discussed above, the AAO finds that the previous decision was made appropriately according to the preponderance of the

evidence standard. 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. The legal authorities cited by counsel do not establish that the AAO erred in its prior decision. Accordingly, 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 motions to reopen and to reconsider are dismissed, the decision of the AAO dated November 19, 2012, is affirmed, and the approval of the petition remains revoked.