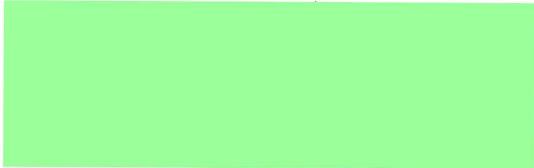




U.S. Citizenship
and Immigration
Services

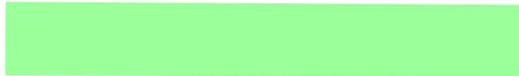
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Date: **FEB 08 2013** Office: CALIFORNIA SERVICE CENTER

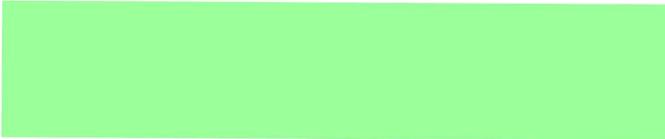


IN RE: Petitioner:
Beneficiary:



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, initially approved the employment-based immigrant visa petition on May 22, 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 June 23, 2011. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed, the previous decision of the AAO will be affirmed, and the petition will remain revoked.

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 an assistant religious education director/instructor. In the Notices of Intent to Revoke, issued on July 11, 2008 and January 20, 2009, the director questioned whether the petitioner had established that the beneficiary had the requisite two years of qualifying work experience immediately preceding the filing of the petition, and discussed the negative findings of a site visit conducted at the petitioner's location which called into doubt the petitioner's credibility. In the final decision, issued on June 23, 2011, the director found that the petitioner had not submitted sufficient evidence to overcome the grounds for revocation. The AAO, in its August 1, 2012 decision, agreed with the director's determination.

On motion, the petitioner submits a brief from counsel, copies of class schedules from the [REDACTED] for 2007 and 2008, a copy of a bill from [REDACTED] and copies of the beneficiary's tax returns for the years 2007 to 2011.

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), and failed to resolve inconsistencies which called into doubt the petitioner's credibility. Two NOIRS issued to the petitioner had discussed findings from the June 15, 2007 site visit which called into doubt assertions made by the petitioner on behalf of several aliens for whom the church had filed petitions. The AAO noted that the petitioner did not offer explanations or evidence for any of the serious inconsistencies regarding its other employees apart from the assertion that all of its employees were at lunch throughout the 11:20 am to 1:00 pm site visit as an explanation for their absence. The AAO also discussed the petitioner's inconsistent statements about the beneficiary's employment history as follows:

At the time of filing, the petitioner indicated that the beneficiary had been and would continue to be employed at both the church and the "academy." However, in response to the July 11, 2008 NOIR, in which it was noted that [REDACTED] stated several of the academy's employees are working part-time performing secular duties, the petitioner argued that [REDACTED] remarks did not apply to the beneficiary as he was only employed at the church address. Further, in response to the director's

questions of whether the beneficiary had in fact been employed full-time as claimed while enrolled in [REDACTED] the petitioner asserted without evidence that the beneficiary studies in the evenings, but submitted a purported work schedule indicating that the beneficiary worked at the church five evenings per week.

The AAO additionally found that the petitioner had not provided an explanation, as requested by the director, regarding its need for a full-time assistant religious education director/instructor in addition to a full-time education missionary and a full-time education director for a 300 member congregation. The AAO discussed counsel's argument on appeal that no information had been previously requested regarding the beneficiary's qualifications. However, the AAO noted that the July 11, 2008 NOIR specifically instructed the petitioner to submit additional evidence in support of the petitioner's assertions regarding the beneficiary's full-time employment.

On motion, counsel for the petitioner reiterates an argument already addressed by the AAO in its dismissal of the original appeal, namely that the petitioner has sufficiently complied with the regulation and has established the beneficiary's eligibility for classification as a special immigrant religious worker. Counsel also reasserts his argument that "at no time is there a request for information as to a specific 'qualification' request for the Beneficiary." The petitioner submits class schedules for the [REDACTED] for 2007 and 2008, which purportedly show that the beneficiary "studied on Mondays all day into the evenings and on Wednesday evenings." The petitioner also submits a bill dated June 15, 2007 from a car repair shop in support of the petitioner's previous assertions that the beneficiary was having car trouble at the time of the site visit. The petitioner additionally submits copies of the beneficiary's tax returns as "further" evidence of the beneficiary's employment with the petitioner. The record contains no evidence that these returns were actually filed with the Internal Revenue Service. The petitioner does not address the AAO's findings regarding the failure to resolve inconsistencies between the findings of the site visit and the petitioner's previous assertions regarding its other alien employees. Nor does the petitioner address the AAO's findings regarding the petitioner's inconsistent statements about the location of the beneficiary's employment, or its failure to explain the need for the beneficiary's full-time services. 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).

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.

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 and submits additional evidence. 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, 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 reconsider is dismissed, the decision of the AAO dated August 1, 2012, is affirmed, and the petition remains revoked.