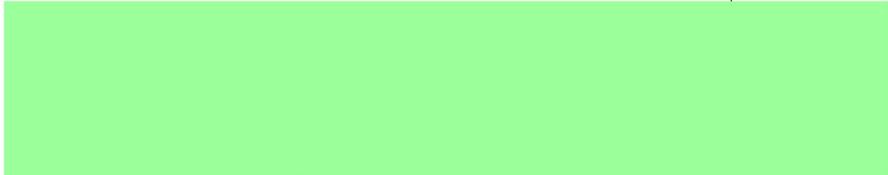




U.S. Citizenship
and Immigration
Services

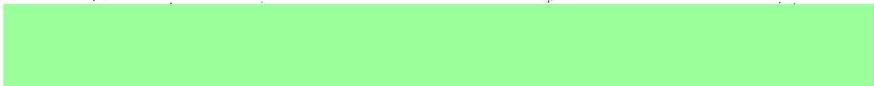
(b)(6)



Date: **FEB 14 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)

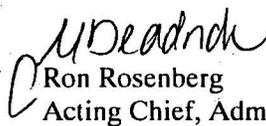
ON BEHALF OF PETITIONER:

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.

Thank you,


Ron Rosenberg
Acting 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 appeal. The AAO will reject the appeal.

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 a Buddhist monk, specifically as an assistant secretary, preacher, and house speaker. The director denied the petition on November 9, 2011, finding that the beneficiary had engaged in unauthorized employment during the two-year period immediately preceding the filing date of the petition. The petitioner filed a Form I-290B, Notice of Appeal, on December 7, 2011. In its August 6, 2012 dismissal of the petitioner's appeal, the AAO agreed with the director's determination. Specifically, the AAO found that the beneficiary only held authorization to work for the [REDACTED] and that, regardless of any affiliation between the temples, the beneficiary had engaged in unauthorized employment by working for the petitioning temple and [REDACTED].

In its decision, the AAO gave notice to the petitioner that, if it believed the AAO inappropriately applied the law in reaching its decision, or had additional information it wished to have considered, it had 30 days to file a motion to reconsider or a motion to reopen, and that the specific requirements could be found at 8 C.F.R. § 103.5. On September 5, 2012, the petitioner appealed the AAO's decision rather than filing a motion to reopen or reconsider.

The petitioner's September 5, 2012 appeal must be rejected. The AAO does not exercise appellate jurisdiction over AAO decisions. The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). *See* DHS Delegation Number 0150.1; 8 C.F.R. § 103.3(a)(iv). Accordingly, the appeal is not properly before the AAO. Therefore, as the appeal was not properly filed, it will be rejected.

The AAO notes that, although the petitioner has indicated on the Form I-290B that it is filing an appeal, an attached letter from the petitioner refers to the filing as a motion. Even if considered as a motion, the instant filing would be dismissed.

In support of the instant filing, the petitioner asserts that the beneficiary has continuously "participated in a Buddhist organization since 2006" and that, although he sometimes assists in ceremonies at other temples, the visits are brief and he immediately returns to the petitioning temple "as his home base." The petitioner submits a letter from the beneficiary, in which he asserts that he "had no intention to break the law," and that he continues to work in a religious vocation for the petitioning temple.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. *See* 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 instant filing reveals no fact that could be considered “new” under 8 C.F.R. § 103.5(a)(2) and, therefore, cannot 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 filing, the petitioner has not met that burden.

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 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 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.

As previously noted, 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 petitioner does not argue or establish in the instant filing that the AAO erred in its August 6, 2012 decision based on the previous factual record.

The AAO notes that, in a letter accompanying the Form I-290B, the petitioner indicated its intent to submit additional supporting documentation. To date, nothing further has been received. Regardless, any such supplemental documentation would not be considered. The 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 is no analogous regulation which allows a petitioner 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.” Pursuant to the regulation at 8

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).

(b)(6)

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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.

For the reasons discussed above, the AAO finds that the instant filing does not meet the requirements of a motion to reopen or a 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 appeal is rejected.