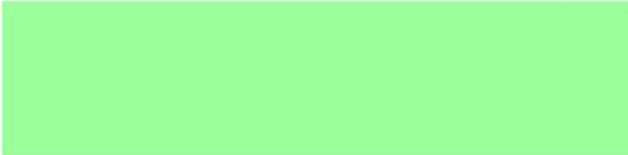




**U.S. Citizenship
and Immigration
Services**

(b)(6)



Date: **JAN 02 2013**

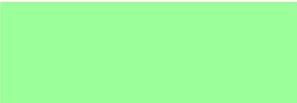
Office: CALIFORNIA SERVICE CENTER

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, Texas Service Center, initially approved the employment-based immigrant visa petition on April 26, 2000. On further review, the Director, California Service Center, determined that the beneficiary was not eligible for the visa preference classification. Accordingly, the director properly served the petitioner with a Notice 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 February 10, 2011. The Administrative Appeals Office (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 minister. In the Notice of Intent to Revoke, issued on October 26, 2010, the director discussed the negative findings of a site visit conducted at the petitioner's location which indicated that the beneficiary began working as a full time public school teacher soon after the approval of the petition rather than working "solely as a minister" as required under the regulations. In the final decision, the director found that the petitioner had not submitted sufficient evidence to overcome the grounds for revocation. The AAO, in its June 19, 2012 dismissal, agreed with the director's determination and additionally found that the petitioner failed to establish that the beneficiary was continuously employed as a minister for the two years immediately preceding the filing date of the petition, February 9, 2000.

On motion, the petitioner submits a notarized statement from the beneficiary.

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)(2000). The AAO found that the beneficiary's work as a public school teacher immediately following the approval of the petition was not consistent with 8 C.F.R. § 204.5(m)(1)(2000), which requires that an alien seek to enter the United States "solely for the purpose of carrying on the vocation of a minister of that religious denomination." The AAO additionally discussed unresolved inconsistencies in the evidence regarding the beneficiary's work history, including the beneficiary's failure to list his secular employment on an August 20, 2002 Form G-325A, Biographic Information, the beneficiary's conflicting statements regarding his previous positions in Jamaica, and conflicting information provided by both the beneficiary and petitioner regarding the start date of the beneficiary's employment with the petitioner. Based in part on the unresolved start date of the beneficiary's work for the petitioner, the AAO found that the petitioner failed to establish that the beneficiary had the requisite two years of continuous, qualifying employment immediately preceding the filing of the petition. The AAO noted that 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 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

In the statement submitted in support of the motion, the beneficiary acknowledges he began working as a public school teacher in 2001 in addition to his ministerial work for the petitioner. He asserts: “I do secondary jobs to help support those in need in the fellowship as well as my family.” Regarding the inconsistencies in the record as discussed by the director and the AAO, the beneficiary asserts that his failure to update his August 20, 2002 Form G-325A to reflect his secular employment was merely an oversight. Further, in response to the AAO’s discussion of a Form I-546, Order to Appear Deferred Inspection, which indicated that on June 7, 2005, the beneficiary told a U. S. Customs and Border Patrol officer that he had been employed as a chemistry teacher at a public high school in Jamaica, the beneficiary asserts that there was a misunderstanding. He states: “I thought that the officer was referring to any other vocation that I was engaged in while in the US in addition to my full time ministerial appointment.” The beneficiary does not address the inconsistent start dates given regarding his employment with the petitioner. The petitioner submits no further evidence regarding the start date of the beneficiary’s employment or regarding the continuity of the beneficiary’s qualifying religious work during the two years immediately preceding the filing of the petition.

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). The petitioner’s motion is not an opportunity for the petitioner to correct its own defects in the record. Further, although the beneficiary attempts to provide explanations for some of the inconsistencies in the record, the petitioner’s evidence on motion again fails to establish that the beneficiary meets the eligibility requirements under 8 C.F.R. § 204.5(m)(1)(2000) as discussed in the AAO’s June 19, 2012 dismissal, including the requirement that the alien seeks to enter the United States “solely for the purpose of carrying on the vocation of a minister of that religious denomination” and the requirement that the petitioner establish the continuity of the beneficiary’s qualifying experience through objective documentary evidence.

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 (USCIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to

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).

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 submits a statement from the beneficiary, discussed above, in which the beneficiary provides explanations for some, but not all, of the inconsistencies in the record. 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 its 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 June 19, 2012, is affirmed, and the petition remains denied.