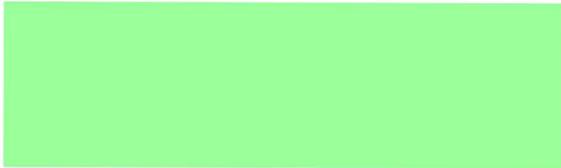




U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **JAN 10 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) 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 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 community resource pastor. The director determined that the beneficiary had engaged in unauthorized employment during the two-year period immediately preceding the filing date of the petition, and therefore lacked the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition. The AAO, in its June 19, 2012 dismissal, agreed with the director's determination.

On motion, the petitioner submits a brief from counsel.

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 that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition. The AAO found that the evidence indicated the beneficiary worked for [REDACTED] during 2007 and 2008, while the beneficiary's R-1 nonimmigrant status only authorized his employment with the [REDACTED] from February 8, 2005 to February 7, 2008, and with the petitioner from June 12, 2008 until February 7, 2010. The AAO considered counsel's assertions on appeal that the beneficiary performed religious duties at [REDACTED] and that the beneficiary believed his work there was part of his work for the petitioning church. However, the AAO found that, regardless of the beneficiary's duties or intent, his outside employment constituted unauthorized employment and a failure to maintain lawful status under the regulations at 8 C.F.R. § 214.2(r)(3)(ii)(e) and (6), as were in effect when the beneficiary was approved as an R-1 nonimmigrant, and the regulation at 214.1(e). The AAO also considered counsel's argument that the beneficiary is entitled to protection under section 245(k) of the Act and stated the following:

Although section § 245(k) of the Act does enable a person who is adjusting status in an employment-based category to adjust even if he or she has been out of status or worked without authorization for less than 180 days, at issue for this proceeding is whether the beneficiary is eligible for approval of the special immigrant petition. Here, the beneficiary has no approved petition, is not eligible to receive an immigrant visa, and therefore is not eligible to adjust status. Any discussion of eligibility for adjustment of status is premature. At this time, the petitioner must establish that the beneficiary meets all of the requirements for 8 C.F.R. § 204.5(m), which, as cited above, requires two years of lawful continuous employment.

The AAO additionally noted a perceived discrepancy between the amount of income indicated on the beneficiary's 2009 Form W-2 from the petitioner, and the amount reflected in a log of

checks paid to the beneficiary. However, as the beneficiary's failure to maintain lawful status during the qualifying period rendered him ineligible for the benefit sought, the AAO noted that it made no further finding regarding the effect of the discrepancy on the beneficiary's eligibility.

In the motion to reconsider, counsel reiterates arguments already addressed by the AAO in its dismissal of the original appeal, as discussed above. Specifically, counsel again argues that the beneficiary performed religious duties at [REDACTED] and considered the work to be an extension of his duties for the petitioner, and that the beneficiary is eligible to adjust status under section 245(k) of the Act. Counsel also notes that the amount of total compensation reflected on the 2009 W-2, including that listed under "other," is consistent with the amount of compensation reflected in the log of checks. However, as the perceived discrepancy was not a basis for the AAO's dismissal of the appeal, counsel's argument on this issue is not a proper basis for reconsideration of the petition. 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. 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 respondent 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 reconsider is dismissed, the decision of the AAO dated June 19, 2012, is affirmed, and the petition remains denied.