U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

Date: JAN 2 2 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 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 denied.

The petitioner seeks classification 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 minister for in West Palm Beach, Florida. The director determined that the petitioner and his prospective employer had not satisfactorily completed a U.S. Citizenship and Immigration Services (USCIS) pre-approval inspection. The AAO, in its July 30, 2012 decision, agreed with the director's determination.

On motion, the petitioner submits a brief from counsel, a letter from the petitioner's prospective employer, printouts from the petitioner's website, photographs, brochures, a copy of a fax cover sheet from counsel to Officer , and a copy of the beneficiary's 2010 Form W-2. Counsel also refers USCIS to the prospective employer's website and to videos of the petitioner online.

In affirming the director's certified decision, the AAO considered additional evidence submitted by the petitioner and determined that the petitioner had failed to complete a USCIS pre-approval inspection satisfactorily pursuant to 8 C.F.R. § 204.5(m)(12). The AAO summarized the director's findings as follows:

> The director concluded that, based upon the two USCIS site visits to the petitioner's work location during which no one was present and due to the petitioner's failure to submit a copy of a recent Form W-2, USCIS was unable to verify the petitioner's activities and the petitioner's self-employment. Accordingly, the director found that the petitioner had failed to complete the requisite pre-approval inspection satisfactorily and that the petition must be denied.

The AAO considered counsel's assertion on certification that the nature of the petitioner's work requires frequent travel and that he was engaged in religious activities offsite during the two USCIS visits which took place on September 17, 2011 and October 1, 2011. The AAO also discussed two event brochures submitted by the petitioner as evidence of his offsite religious activities during the dates of the site visits. However, as one of the brochures described an event which took place only in the evening and as neither of the brochures indicated which year the events purportedly took place, the AAO found the evidence insufficient to overcome the negative findings of the site visits.

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 support of the motion, the petitioner submits copies of additional brochures and website printouts regarding the religious events at which the petitioner was purportedly working during the site visits. Although some of the newly submitted brochures indicate that the events took place in 2011, the petitioner also submits a printout which lists the times, days, and months of the same events from the website: (Emphasis added). Counsel and the petitioner's employer also assert for the first time on motion that the site visit location, is the church's administrative office, while "the main church" is at . No explanation is provided for the failure to include this address on the "List of the specific address(es) or location(s) where the alien will be working" as part of the Employer Attestation submitted in response to the May 31, 2011 Request for Evidence. Further, no explanation is provided as to why this assertion was not made in response to the director's certified decision. Regardless, 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 available and could have been provided on appeal. 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. Further, as discussed above, the petitioner's evidence on motion includes discrepancies which have not been resolved. 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).

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.

In the motion to reconsider, the petitioner reiterates arguments already addressed by the AAO in its dismissal of the original appeal, namely, that the petitioner's work involves offsite evangelism and that he was engaged in religious work elsewhere during the site visits. Additionally, counsel points out that, on certification, the petitioner submitted a copy of his 2010 Form W-2 along with a fax cover sheet addressed to the inspecting officer. Counsel asserts that the AAO erroneously overlooked this evidence in its July 30, 2012 decision. The AAO acknowledges that this evidence was not specifically discussed in the decision. However, such evidence was immaterial to the decision as the finding regarding the petitioner's failure to successfully complete a pre-approval inspection was based on the insufficient evidence regarding his absence during the site visits. 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

[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).

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 notes the AAO's failure to discuss evidence which, as discuss above, does not affect the outcome of the decision. 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 reopen and the motion to reconsider are dismissed, the decision of the AAO dated July 30, 2012, is affirmed, and the petition remains denied.