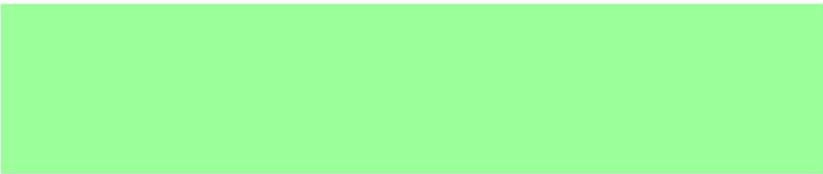




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JAN 30 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,

MRosenberg

f 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 pastoral assistant. The director determined that the petitioner failed to establish that the beneficiary is qualified for the proffered position. In its July 25, 2012 decision, the AAO agreed with the director's determination and additionally found 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.

On motion, the petitioner submits a brief from counsel, two signed attestations from Superior [REDACTED] Formation Director of [REDACTED] Vietnam, and an excerpt from The Code of Canon Law.

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 is qualified for the proffered position. The AAO considered counsel's argument that the evidence submitted on appeal demonstrated that the beneficiary "is qualified for religious vocation." However, the AAO noted inconsistencies in the petitioner's evidence and agreed with the director's finding that the evidence failed to demonstrate that the beneficiary had completed her final vows according to the formation program of the [REDACTED] congregation in Vietnam as described in a document submitted by the petitioner. Additionally, the AAO found that the petitioner failed to submit sufficient evidence regarding its required qualifications for the proffered position. The AAO noted that the petitioner never indicated that completion of the formation process is required for the pastoral assistant position and failed to resolve whether the position was in fact a religious vocation rather than a ministerial position as initially indicated on the Form I-360 petition. As an additional matter, the AAO found that the petitioner failed to establish that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition. The AAO noted that the petitioner failed to provide dates of the beneficiary's employment to establish continuity, as well as evidence that the beneficiary received salaried and/or non-salaried compensation during the qualifying period. The AAO also noted that the petitioner failed to submit evidence regarding the beneficiary's immigration status or work authorization in the United States for a portion of the qualifying period.

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.

On motion, the petitioner reiterates an argument already addressed by the AAO in its dismissal of the original appeal, namely that the position is a religious vocation for which the beneficiary is qualified. The petitioner submits a new attestation from the formation director of [REDACTED] in Vietnam explaining that the inconsistent dates previously provided for the beneficiary's first profession were because of a "typo." The petitioner also submits an excerpt from the Code of Canon Law regarding religious profession. Counsel asserts that the description of proposed daily duties provided on the petition "shows that the proffered position of Pastor Assistant is in fact vocational in nature" and "does not involve any ministerial works." However, no explanation is provided for why the petitioner indicated on the petition that the alien would "be working as a minister." 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). Further, counsel fails to address the AAO's findings regarding the lack of documentary evidence or explanation from the petitioner regarding its qualifications for the position of pastoral assistant. With regard to the beneficiary's qualifying experience, counsel asserts that "the beneficiary became a nun on May 07, 2005 and continuously worked for the [REDACTED] and the [REDACTED]" but fails to address the AAO's findings regarding the lack of evidence concerning dates of employment, compensation, and immigration status during the qualifying period.

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 July 25, 2012, is affirmed, and the petition remains denied.

