



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:

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.

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 filed a subsequent appeal. The Administrative Appeals Office (AAO) summarily dismissed the appeal and dismissed subsequent motions to reopen and reconsider. The matter is now again 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 self-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 a children's ministry assistant for [REDACTED] in Warsaw, Indiana.

The director denied the petition on May 4, 2010. On June 3, 2010, the self-petitioner appealed the decision. The AAO summarily dismissed the appeal on January 30, 2012, noting that the petitioner failed to state a basis for the appeal and, although the petitioner indicated on the Form I-290B that a brief or additional evidence would be submitted within 30 days, nothing further had been received. On March 22, 2012, the petitioner filed a motion to reopen and a motion to reconsider the AAO's decision. The AAO dismissed the motions as untimely filed on September 10, 2012. The AAO additionally noted that, regardless of the untimely filing, the motions would be dismissed for failing to meet the requirements at 8 C.F.R. §103.5(a) as the petitioner failed to present any arguments or evidence that the AAO's summary dismissal of the appeal was improper or erroneous.

In support of the instant motions, the petitioner submits a statement and additional evidence. In the statement, the petitioner asserts: "I previously sent the forms and documents necessary, although I am afraid I may have sent them to the wrong address." It is not clear whether the petitioner refers to "forms and documents" related to his June 3, 2010 appeal or his March 22, 2012 motions, and no evidence is submitted in support of his assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The rest of the petitioner's statement and the evidence submitted does not address the AAO's most recently issued decision. Rather, the arguments and the submitted evidence relate to the eligibility issues discussed in the director's May 4, 2010 decision. On motion, the AAO will only consider arguments and evidence relating to the grounds underlying the AAO's most recent decision. The petitioner bears the burden of establishing that the AAO's September 10, 2012 dismissal of the motions as untimely and for failure to meet the requirements of a motion to reopen or reconsider was itself in error. If the petitioner can demonstrate that the AAO erred by dismissing those motions, then there would be grounds to reopen or reconsider the proceeding. The petitioner has not done so in this proceeding. The filing of a motion does not present a new opportunity as though the dismissal of the previous motion never existed. The petitioner has not shown that its March 22, 2012 filing met the requirements of a motion to reopen or a motion to reconsider, and the AAO will

not, at this late date, entertain the petitioner's untimely arguments regarding the underlying decisions to deny the petition and to summarily dismiss the original appeal.

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 The petitioner argues that he meets the eligibility requirements for classification as a special immigrant religious worker and submits additional evidence regarding his purported eligibility. However, the petitioner does not provide any documentary evidence to demonstrate that he met the requirements of a motion to reopen or reconsider in his March 22, 2012 filing, or that the AAO erroneously dismissed those motions. A review of the petitioner's statement and evidence on motion 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 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 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

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).

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authority. The petitioner does not argue or establish in this motion to reconsider that the AAO erred in its September 10, 2012 decision based on the previous factual record, nor does he cite authorities which demonstrate error in the AAO's decision. Accordingly, 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 motions are dismissed. The AAO's September 10, 2012 decision is affirmed, and the petition remains denied.