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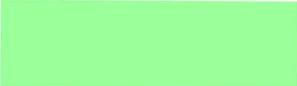
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



Date: **JAN 31 2013** Office: CALIFORNIA SERVICE CENTER



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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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. The matter is now before the AAO on appeal. The AAO will reject the appeal.

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 Sunday school teacher. The director denied the petition on November 3, 2011, finding that the petitioner had not established that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition. The director additionally found that the petitioner failed to establish that the beneficiary is qualified in the religious occupation. The petitioner filed a Form I-290B, Notice of Appeal, on December 5, 2011. On July 17, 2012, the AAO summarily dismissed the petitioner's appeal, finding that the petitioner failed to specifically identify an erroneous conclusion of law or statement of fact in the director's decision as a basis for the appeal. The AAO noted that, although counsel for the petitioner asserted that he would submit additional evidence demonstrating error in the director's decision within 30 days, nothing further was received.

In its July 17, 2012 decision, the AAO gave notice to the petitioner that, if it believed the AAO inappropriately applied the law in reaching its decision, or had additional information it wished to have considered, it had 30 days to file a motion to reconsider or a motion to reopen, and that the specific requirements could be found at 8 C.F.R. § 103.5. On August 17, 2012, the petitioner appealed the AAO's decision rather than filing a motion to reopen or reconsider.

The petitioner's August 17, 2012 appeal must be rejected. The AAO does not exercise appellate jurisdiction over AAO decisions. The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). *See* DHS Delegation Number 0150.1; 8 C.F.R. § 103.3(a)(iv). Accordingly, the appeal is not properly before the AAO. Therefore, as the appeal was not properly filed, it will be rejected.

Even if considered as a motion, the instant filing would be dismissed. In support of the instant filing, the petitioner submits additional evidence, including a letter from the petitioner, a letter from [REDACTED] and a copy of the [REDACTED]

However, the evidence submitted does not address the AAO's most recently issued decision. Rather, it focuses on the issues contained in the director's November 3, 2011 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 summary dismissal of the petitioner's appeal for failure to identify a basis for the appeal was itself in error. If the petitioner demonstrated that the AAO erred by summarily dismissing that appeal, 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 summary dismissal never existed. The petitioner has not claimed or shown that the AAO should not have summarily dismissed the appeal, 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 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.<sup>1</sup> In support of the instant filing, the petitioner submits additional evidence relating to the beneficiary's eligibility as a special immigrant religious worker. However, the petitioner does not argue or provide any documentary evidence to demonstrate that it identified an error in the director's decision in its December 5, 2011 appeal, or that the AAO erroneously summarily dismissed that appeal. A review of the petitioner's submission 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 filing, the petitioner has not met that burden.

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 authority. The petitioner does not argue or establish in the instant filing that the AAO erred in its July 17, 2012 decision based on the previous factual record.

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<sup>1</sup> 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).

For the reasons discussed above, the AAO finds that the instant filing does not meet the requirements of a motion to reopen or a 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 appeal is rejected.