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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: JUN 0 4 2013 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

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 director granted motions to reopen and reconsider on October 19, 2010 and January 31, 2011 and again dismissed the petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. 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 is a Jewish temple. 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 music, language, and prayer teacher. The director 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 date of the petition. The AAO, in its September 28, 2012 dismissal, agreed with the director's determination and additionally found that the petitioner had failed to establish that it qualifies as a bona fide nonprofit religious organization.

Accompanying the Form I-290B, Notice of Motion, submitted on October 26, 2012, the petitioner submitted a brief from counsel, a letter from the beneficiary's accountant, a letter from the (formerly known as , as well as letters to that organization from the Internal Revenue Service (IRS). An additional submission received on March 21, 2013 included a second brief from counsel and a copy of the decision in *Shalom Pentecostal Church v. Napolitano*, 2013 WL 16298 (D.N.J. 2013).

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 eligibility for the benefit sought, in part based on the petitioner's failure to establish that the beneficiary had the requisite two years of continuous qualifying work experience immediately preceding the filing of the petition. The AAO found that the petitioner had not submitted sufficient evidence to explain the beneficiary's self-employment earnings and to establish that the self-employment was authorized and qualifying religious work and failed to rebut the director's finding that the beneficiary engaged in unauthorized employment for

The AAO additionally found that the petitioner had not met the evidentiary requirements at 8 C.F.R. § 204.5(m)(8) to establish that it qualifies as a bona fide nonprofit religious organization. The AAO acknowledged that the petitioner had submitted a letter from the IRS recognizing the tax-exempt status of (now known as the under section 501(c)(3) of the Internal Revenue Code as well as a letter from the Union for stating that the petitioner is a member in good standing of that "umbrella" organization. However, the AAO noted that the petitioner had not provided evidence that the had received a group exemption that would apply to its subordinate units.

On motion, regarding the beneficiary's qualifying experience, counsel repeats arguments made on appeal. Specifically, counsel argues that the beneficiary's self-employment for the petitioner was an extension of the beneficiary's authorized, qualifying employment for that organization, and that the

beneficiary did not engage in unauthorized, compensated employment with but received only a small non-salary honorarium for participation in a fundraising event. The petitioner submits a letter from the beneficiary's accountant explaining the rationale for reporting the compensation from as income.

With regard to the AAO's finding that the petitioner failed to establish its status as a bona fide nonprofit religious organization, the petitioner resubmits copies of the previously submitted evidence discussed by the AAO on appeal. Counsel does not argue or submit evidence to establish that the holds a group exemption which would apply to its subordinate organizations. Rather counsel asserts that the United States Citizenship and Immigration Services (USCIS) previously granted R-1 nonimmigrant status to the beneficiary based on the same evidence submitted in this matter, and that the director did not question the petitioner's status in any of the communications regarding the instant Form I-360 petition. Counsel's argument is not persuasive. Each petition filing is a separate proceeding with a separate record. In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). The record of proceeding does not contain copies of the visa petitions that the petitioner claims were previously approved.

The AAO further notes that it is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). USCIS need not treat acknowledged errors as binding precedent. *See* 8 C.F.R. § 103.3(c); *see also Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petition on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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]

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 either previously submitted or was previously available and could have been provided on appeal. The

[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).

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.

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 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.

In the instant motion to reconsider, the petitioner generally reiterates prior arguments already addressed by the AAO on appeal. Additionally, in a further submission received by the AAO on March 21, 2013, counsel requests that the AAO remand the instant matter for consideration by the district director in light of the recent decision *Shalom Pentecostal Church v. Napolitano*, 2013 WL 16298 (D.N.J. 2013), in which the United States District Court for the district of New Jersey found that 2008 amendments to 8 C.F.R. §204.5(m)(4) requiring lawful immigration status and employment authorization during the qualifying period are ultra vires to the Immigration and Nationality Act. In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court even in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Accordingly, the cited decision is not a relevant precedent decision.

Furthermore, regardless of the issue of the beneficiary's unauthorized employment during the qualifying period, counsel has failed to demonstrate any error and overcome the AAO's finding that the petitioner failed to establish that it qualifies as a bona fide non-profit religious organization. Specifically the petitioner failed to establish that it has a currently valid determination letter from the IRS establishing the petitioner's tax exemption or that the petitioner is covered under currently valid determination letter from the IRS establishing that the has a group tax-exemption. *See* 8 C.F.R. § 204.5(m)(8).

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 support such allegations of error in his motion to reconsider with pertinent, binding legal authority, 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 September 28, 2012, is affirmed, and the petition remains denied.