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

(b)(6)

U.S. Citizenship and Immigration Services

Date: MAY 10 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 with the field office or service center that originally decided your case by filing a 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 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 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 an associate pastor. 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 November 3, 2012 decision, agreed with the director's determination.

On motion, the petitioner submits a brief from counsel, a letter from the , informational materials regarding that organization, a copy of the beneficiary's checking account statement for the period September 19, 2012 to October 16, 2012, and copies of pages from the beneficiary's passport.

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 that the beneficiary had the requisite two years of continuous qualifying work experience immediately preceding the filing of the petition. The petitioner filed the petition on June 3, 2011. The AAO noted that the beneficiary arrived in the United States on January 16, 2010 in B-2 nonimmigrant visitor status which expired on July 15, 2010, held no lawful immigration status following that date, and did not hold any status that would have authorized him to engage in employment in the United States during the qualifying two-year period. The beneficiary indicated on a Form G-325A, Biographic Information, that he had been employed by the petitioner since January 2010. In its response to a request for evidence, the petitioner stated that the beneficiary "began volunteer pastoral ministry to the on June 20, 2009." The AAO also noted that counsel for the petitioner asserted that the beneficiary was "involved in a volunteer pastoral ministry" for the petitioning church for the preceding two years and that he lives with a "family who provides him with day to day support." On appeal, counsel argued that the beneficiary "was on a sabbatical from the and volunteered with parishioners while waiting for permission to work in the United States." The petitioner submitted a letter from the asserting that the organization continued to employ the beneficiary and financially support him during his time in the United States. The AAO was not persuaded by counsel's argument, finding that the petitioner did not submit sufficient documentary evidence to support the assertion that the beneficiary's time in the United States constituted a qualifying break under 8 C.F.R. § 204.5(m)(4). The AAO stated:

> The regulation requires that the alien was still employed as a religious worker and that the "nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States." None of the

> documentary evidence submitted by the petitioner establishes that the beneficiary was in the United States for religious training or sabbatical. Rather, the evidence consistently indicates that the beneficiary came at the request of the petitioning church to work as a pastor. Further, the letter from the asserts for the first time on appeal the beneficiary "is employed by the ' suggesting current employment. The AAO notes that no mention was made of this current employment in the initial filing or in response to the request for evidence which specifically focused on the continuity of the beneficiary's employment. Further, on the Form G-325A, the beneficiary did not include such employment but instead indicated that he is currently employed by the petitioner.

The AAO found that the beneficiary's work in the United States for the petitioner was not qualifying experience under 8 C.F.R. § 204.5(m)(11), as the petitioner had neither submitted evidence of compensated employment nor claimed or established that the beneficiary was "participating in an established, traditionally non-compensated, missionary program." Further, the AAO noted that, regardless of the issue of compensation, the beneficiary did not hold lawful immigration status during the qualifying period as required under 8 C.F.R. § 204.5(m)(4). Additionally, the AAO found that although the beneficiary was purportedly performing religious work abroad during a portion of the qualifying period, the petitioner had not submitted verifiable evidence comparable to IRS documentation regarding the alien's salaried or non-salaried compensation abroad or verifiable evidence of self-support during that period.

On motion, counsel again argues that the beneficiary's time in the United States constituted a qualifying break under 8 C.F.R. § 204.5(m)(4) as a sabbatical during which he was still employed by the The petitioner submits a new letter from that organization which states that the beneficiary "is not a diocesan priest," but is rather a member of a religious vocation, having taken a "permanent oath" on June 25, 1994, and is therefore perpetually engaged in his responsibilities to the In the letter, the organization also again asserts that it has continuously financially supported the beneficiary. The AAO notes that no documentary evidence has been submitted to demonstrate the purported financial support during the qualifying period. 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)).

Counsel alternately argues for the first time on motion that the petitioner meets the requirements of 8 C.F.R. § 204.5(m)(11) with regard to the beneficiary's religious work in the United States, asserting that the letter from the establishes that the beneficiary "does 'participate in an established, traditionally non-compensated, missionary program.'" Counsel states: "Additional evidence that SMA is a missionary vocation has been enclosed." As noted by the AAO in its previous decision, in elaborating on the issue of compensation in the final rule, USCIS determined that the sole instances where aliens may be uncompensated are those aliens "participating in an established, traditionally non-compensated, missionary

program." *See* 73 Fed. Reg. at 72278. *See also* 8 C.F.R. § 214.2(r)(11)(ii). The petitioner has not submitted evidence to establish that the has previously sponsored R-1 missionaries and therefore qualifies as an established program.

Further, the petitioner does not address the AAO's finding that the beneficiary lacked lawful immigration status in the United States during a portion of the qualifying period between the expiration of his B-2 visitor status on July 15, 2010 and the filing of the petition on June 3, 2011.

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 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. The petitioner'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.

In the motion to reconsider, the petitioner reiterates a prior argument, namely that the beneficiary's time in the United States is a qualifying break under the regulations. The petitioner also makes new arguments that were not previously asserted, namely that the beneficiary's religious work during the qualifying period was in a religious vocation and that he was participating in an established, traditionally non-compensated, missionary program. 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.

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[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).

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 makes new arguments based on 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 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 November 3, 2012, is affirmed, and the petition remains denied.