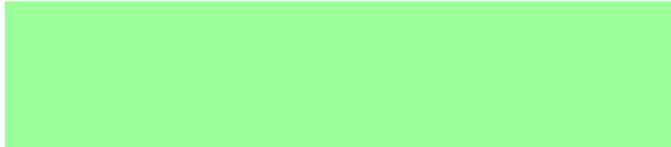




U.S. Citizenship  
and Immigration  
Services

(b)(6)



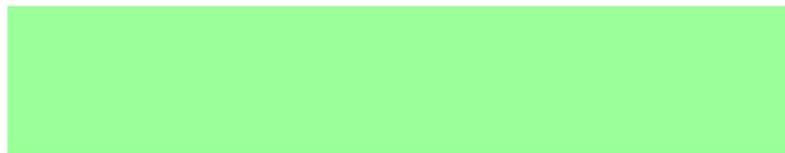
Date: **MAY 16 2013** Office: CALIFORNIA SERVICE CENTER

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry 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 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 Roman Catholic archdiocese. 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 religious worker in charge of liturgical music for church worship and teaching the faith through Christian music in schools. The director determined that the petitioner had not established that the position offered to the beneficiary qualifies as a religious occupation. The AAO, in its November 3, 2012 decision, agreed with the director's determination.

On motion, the petitioner submits a brief from counsel, declarations from the beneficiary and Sister [REDACTED] copies of the beneficiary's transcripts, materials related to the Third Order of the Franciscan Laity and the beneficiary's membership in that group, letters of recommendation from the [REDACTED] of the [REDACTED] and copies of articles about Guam's Catholic heritage. The petitioner additionally submits materials related to the petitioner's tax-exempt status, excerpts from the Official Catholic Directory, a description of the [REDACTED] copies of the beneficiary's syllabus and teaching materials, an audio CD, copies of the beneficiary's tax returns and payroll records, a copy of the beneficiary's work schedule, an address by Pope Benedict XVI, an article from the New Catholic Encyclopedia entitled "Religion, Teacher of," an article from [REDACTED] and copies of documents already in the record.

In the November 3, 2012 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 based on the petitioner's failure to establish that the beneficiary would be working in a qualifying religious occupation. The AAO noted that the petitioner's evidence consistently indicated that the proffered position would be comprised of two distinct roles: that of a compensated music teacher at [REDACTED] and that of a volunteer worker in the music ministry who serves in part as a pianist and choir director at [REDACTED]. Regarding the beneficiary's role as a volunteer within the parish, the AAO found that "because the beneficiary is essentially a lay worker and will not be compensated for this work, the position cannot be considered a qualifying position" under the regulation at 8 C.F.R. § 204.5(m)(2). With regard to the beneficiary's role as a music teacher, the AAO stated the following:

The petitioner asserts on appeal that the beneficiary's duties as a music teacher are not primarily academic but rather religious in nature. However, the petitioner has not submitted documentary evidence in support of this 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 schedule submitted by the petitioner listed only "Music classes" and "school choir for liturgical worship" as the beneficiary's duties at the school, without providing details of the nature of her teaching duties or breakdown of the time spent performing religious versus administrative or secular work. Further, although the schedule indicates that she works eight hours per day at the school, Monday through Friday, the letter submitted on appeal from the [REDACTED] states that the beneficiary does not work a full eight-hour day at the school. Therefore, it is not clear whether the beneficiary's position as music teacher will in fact be a full-time occupation. 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). Neither the letter from the [REDACTED] submitted in response to the Request for Evidence, nor the letter from the Superintendent for the Diocese, submitted on appeal, provide information about the subject material taught by the beneficiary or the specific nature of her duties to establish that her work is primarily religious and includes only limited administrative duties.

Further, the regulation at 8 C.F.R. § 204.5(m)(5)(A) requires that the beneficiary's duties "be recognized as a religious occupation within the denomination." The petitioner has not submitted sufficient documentary evidence to establish that the position of music teacher is recognized as a religious occupation within the denomination. Most of the documentation submitted on appeal relates to the role of music in Catholic *worship services*. The petitioner also submits a publication entitled "Lay Ministries," which discusses, among other roles, the roles of catechists (defined as "those who dedicate all or part of their time to the education in the faith of the children or adult Christians") and theology teachers in the church. However, as discussed above, the petitioner has not submitted sufficient evidence regarding the beneficiary's teaching duties to establish that she is primarily involved in teaching religion or theology.

On motion, counsel for the petitioner argues that, while the beneficiary's volunteer work for the church "enhances" the beneficiary's service, her position within the [REDACTED] alone is sufficient to meet the requirements of a full-time religious occupation. Counsel asserts that the documentation already submitted establishes that the beneficiary's work at the [REDACTED] is a full-time position, and the petitioner also submits a new work schedule and declarations by the beneficiary and the school's principal, Sister [REDACTED] attesting to the full-time nature of the position. Neither counsel nor the petitioner address the AAO's finding that the petitioner failed to resolve the inconsistency between the previously submitted work schedule and the [REDACTED]'s statement on appeal regarding the beneficiary's hours. The

declarations by the beneficiary and the school principal also attest to the religious nature of the beneficiary's duties which purportedly include teaching religious music and "Christian Living," and directing the choir. The petitioner submits additional material about the importance of music in the Catholic religion and copies of teaching materials to demonstrate the religious nature of the music being taught. The petitioner also submits materials related to the recognition of the positions of religion teacher and choir director as religious occupations within the Catholic denomination. The petitioner does not submit evidence to establish that the position of music teacher is recognized as a religious occupation. The AAO notes that, while the new work schedule submitted on motion indicates that the beneficiary's time at the school is fairly evenly divided between teaching "Music" classes and "Christian Living" classes and additionally directing the church choir, the previously submitted schedule only stated: "7:30 am – 4:30 pm Music classes; school choir for liturgical worship." Although the petitioner frames the beneficiary's teaching position as that of a religion teacher on motion, this assertion is not consistent with previous assertions and evidence indicating that her role was that of a music teacher. 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. at 591-92. Further, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to U.S. Citizenship and Immigration Services (USCIS) requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

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.<sup>1</sup>

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 petitioner's motion is not an opportunity for the petitioner to correct its own defects in the record. Further, on motion, the petitioner again fails to resolve inconsistencies in the record regarding the beneficiary's schedule and duties at [REDACTED]. 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

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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).

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, counsel argues that the beneficiary’s role at [REDACTED] alone meets the definition of a religious occupation. Counsel reiterates arguments already addressed by the AAO in its previous decision, namely that the beneficiary works full-time at the school, that her duties there are primarily religious in nature, and that the denomination recognizes such duties as a traditional religious occupation. As discussed above, the assertions underlying these arguments are not sufficiently supported by documentary evidence. 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.

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, counsel reiterates prior arguments and argues that the beneficiary’s position at [REDACTED] meets the definition of a religious occupation. In support of her arguments, counsel cites *Perez v. Ashcroft*, 236 F. Supp. 2d 899 (Ill. Dist. Ct. 2002) and *Love Korean Church v. Chertoff*, 549 F.3d 749 (9th Cir. 2008), both of which dealt with the definition of religious occupations under the previous regulations for special immigrant religious workers. The current regulations were published on November 26, 2008. As the courts’ interpretations applied to regulations which are no longer in effect, they are not relevant to the instant case. 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 based on the previous factual record, 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.