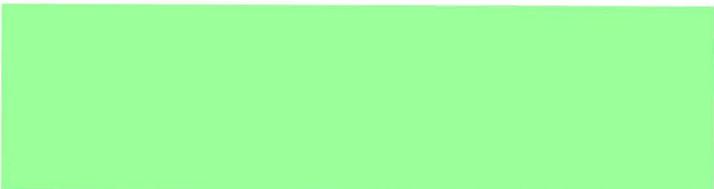


(b)(6)

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

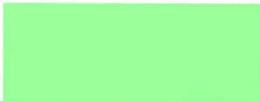


U.S. Citizenship
and Immigration
Services

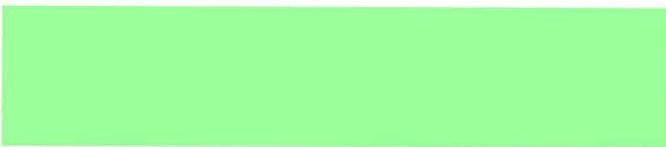


Date: **MAY 22 2013**

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:



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,

A handwritten signature in cursive script, 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 Administrative Appeals Office (AAO) withdrew the director's decision and remanded the matter for further action and consideration. The director again denied the petition and, following the AAO's instructions, certified the decision to the AAO for review. The AAO affirmed the director's certified decision. The matter is now before the AAO on a motion to reopen and a motion to reconsider.¹ 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 a parish pastor-in-charge. The AAO, in its September 26, 2012 decision affirming the certified denial, found that the beneficiary had not been working solely as a minister as previously claimed. The AAO therefore determined that the petitioner failed to establish that the beneficiary would be working solely as a minister.

On motion, the petitioner submits a brief from counsel, letters from the petitioner, signed statements from the beneficiary and his wife, copies of the beneficiary's individual tax returns and Forms W-2 for 2004 through 2011, copies of a bank account statement for [REDACTED] a printout from the [REDACTED] website [REDACTED] regarding the status of the businesses [REDACTED] and a Receipt of Withdrawal of an Assumed Name from the [REDACTED] office for [REDACTED]

In the September 26, 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 solely as a minister. Previously, in its January 7, 2010 decision to remand the petition, the AAO noted a business name registered by the beneficiary, [REDACTED] which the petitioner had asserted was necessary for the beneficiary to help a friend in Nigeria purchase computers in the United States. The AAO requested that director ask the petitioner to submit documentary evidence to establish that the business was never intended to be a profit-generating enterprise, noting that testimonial claims by the parties involved would not suffice.

The director issued a Notice of Intent to Deny (NOID) the petition on August 17, 2010. In response, the petitioner submitted a letter from the [REDACTED] stating that the beneficiary was a part owner of [REDACTED] between June 19, 2007 and March 14, 2008. The petitioner also submitted copies of purchase orders for Dell computers and copies of wire transfers from [REDACTED] as well as an affidavit from an associate of the beneficiary stating that the beneficiary did not receive any money, benefit or gain from the transaction. In the October 5, 2010 certified decision denying the petition, the director found that the petitioner had not been forthright in the evidence

¹ Although Part 2 of the instant Form I-290B, Notice of Appeal or Motion, indicates that the petitioner is filing a motion to reopen, an attached letter from the petitioner refers to the filing as a motion to reconsider the AAO's decision.

submitted, noting that records listed the beneficiary as owner of [REDACTED] from September 14, 2004 to December 9, 2005, a period earlier than previously claimed, and that the beneficiary and his wife were engaged in a business enterprise called [REDACTED], and his wife was engaged in a business enterprise called [REDACTED] none of which was reported on the beneficiary's joint tax returns.

In response to the certified decision, the petitioner asserted that [REDACTED] and [REDACTED] were not listed on the beneficiary's tax returns because they were never active businesses, but were instead started by the beneficiary's wife in anticipation of receiving work authorization and were then closed when the authorization was not received. Regarding [REDACTED], the petitioner asserted that, although the beneficiary first registered the business in 2004 with the intention to purchase computers for his friend, the purchase was never completed because of a misunderstanding. The petitioner therefore asserted that the business never existed during the earlier period and the beneficiary accordingly forgot about that period. The petitioner also asserted that the completed computer transaction was not arranged for the beneficiary's profit and the amount on the invoice submitted in response to the NOID did not include a profit for the beneficiary, but rather included additional fees and costs beyond the cost of the computers. The AAO noted that the majority of the petitioner's certification response consisted of its own assertions with insufficient evidence to support the claims. 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 AAO found that "the petitioner has failed to [submit] evidence that the beneficiary was not engaged in business with Heph Technology Services or Cute Apparel for profit."

On motion, the petitioner asserts that the beneficiary has been continuously employed and compensated by the petitioning church and has not taken up any outside employment. As previously indicated, the petitioner submits copies of the beneficiary's Forms W-2s and tax returns from 2004 through 2011 as evidence of this continuous employment.

In a statement submitted on motion, the beneficiary sets forth his account of events relating to [REDACTED] and asserts that the business was not intended to profit himself, but was set up to help a friend in Nigeria purchase computers to be sold in that country. The beneficiary repeats assertions previously made by the petitioner that a registered business name was necessary because an individual is not allowed to purchase more than five Dell computers, and to facilitate money transfers from his friend's bank "because there is a limit to how much an individual in Nigeria is allowed to transfer." The petitioner submits no documentary evidence to support the assertion regarding the purported limit on computer purchases or the assertion regarding money transfers from Nigerian individuals. The beneficiary asserts that, after registering the business name in 2004, he realized he did not have the necessary funds to complete the transaction and therefore withdrew the business name on December 9, 2005. He asserts that he later enlisted the assistance of a friend in the United States and re-registered the business name in order to complete the computer purchase for the friend in Nigeria. The beneficiary states: "When the issue of violation was raised, I withdrew my name from the business name." The beneficiary asserts "the business name was

registered without the knowledge that it could be seen as a violation.” The petitioner also submits a statement from the beneficiary’s wife, in which she asserts the following:

[REDACTED] involvement in [REDACTED] was not for administrative purpose, but just the courtesy of a woman that wants the backing of her spouse. [REDACTED] is not fashion savvy. The registration of [REDACTED] was still in anticipation of my work authorization, but the assumed name was withdrawn in 2008 and the space rented vacated when the issue of status violation came up with USCIS. Apparently I did not know registering a business name would violate my status.

The petitioner submits a Receipt of Withdrawal of an Assumed Name from the [REDACTED] [REDACTED] dated March 14, 2008, as well as a printout from the [REDACTED] website regarding the status of the businesses [REDACTED] and [REDACTED]. Regarding [REDACTED] the printout lists the status as “Withdrawn Unknown” on March 14, 2008 and December 9, 2009, and lists the status as “Unknown” on September 14, 2004 and June 19, 2007. The printout lists the status for [REDACTED] as “Unknown” on June 19, 2007 and as “Withdrawn Unknown” on March 14, 2008. The petitioner additionally submits a copy of a [REDACTED] statement from November 2008 for an account held by [REDACTED] highlighting wire transfers from [REDACTED]

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.²

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. Regarding the submission of the beneficiary’s tax documentation on motion, the returns for 2005, 2006, 2007, 2008, 2010 and 2011 were all amended returns with the 2005 through 2007 returns explaining that the reason for the amendment was that the beneficiary’s prior returns indicated the beneficiary was self-employed. The amendments were all signed prior to the AAO’s September 26, 2012 decision. Further, with the exception of the amended tax returns for 2006 and 2007, the petitioner has not submitted evidence that these returns were actually filed with the IRS. Moreover, like a delayed birth certificate, the amended tax returns created several years after the fact raise serious questions regarding the truth of the facts asserted. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991)(discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa

² 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).

proceedings). The petitioner's motion is not an opportunity for the petitioner to correct its own defects in the record.

On motion, the petitioner again fails to provide documentary evidence, as opposed to testimonial evidence, to support its assertions and to establish that the beneficiary was not engaged in business for profit with [REDACTED]. The arguments presented 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 arguments already addressed by the AAO in its previous decision, namely that the beneficiary did not intend to profit from his registered business, and that the registration was a necessary step in order to help a friend in Nigeria purchase computers. As discussed above, the assertions underlying these arguments are not 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 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. *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. 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 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 September 26, 2012, is affirmed, and the petition remains denied.