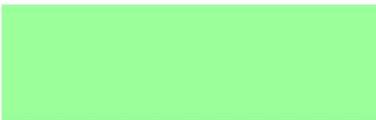




U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **MAY 24 2013**

Office: NEBRASKA 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:

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.

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 and two motions to reopen and to reconsider. The matter is now before the AAO on a third motion to reopen and reconsider. The motions will be dismissed.

The self-petitioner seeks classification as a special immigrant religious worker pursuant to section 203(b)(4) of the Act to perform services as a children's ministry assistant. The AAO summarily dismissed the petitioner's appeal and dismissed his first motion to reopen and to reconsider as untimely filed. The AAO dismissed the petitioner's second motion to reopen and reconsider for failure to state new facts supported by documentary evidence and failure to assert any legal or factual errors in the AAO's previous decision.

On motion, the AAO will only consider arguments and evidence relating to the grounds underlying the AAO's most recent decision, the AAO's January 30, 2013 dismissal of the petitioner's second motion to reopen and reconsider. The petitioner bears the burden of establishing that the AAO's dismissal of that motion was itself in error. If the petitioner can demonstrate that the AAO erred by dismissing that motion, then there would be grounds to reopen the proceeding.

With the instant motion, the petitioner submits a letter stating:

My initial application was summarily dismissed because it was filed untimely. The reason why it was filed untimely was because I exhausted my financial resources filing these forms and did not have the money to file my appeal for reconsideration in the time allotted.

The petitioner also submits a letter of recommendation from a member of the prospective employing church, copies of receipt notices from USCIS, and a copy of a 2007 tax-exemption letter from the IRS to the petitioner.

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 documentation that the petitioner submits on motion reveals no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2).

Regarding the petitioner's statement that his appeal was summarily dismissed as untimely, to the contrary, the appeal was summarily dismissed because he failed to identify any erroneous conclusions of law or statement of fact as the basis for the appeal and submitted no documentation in support of the appeal. *See* 8 C.F.R. § 103.3(a)(1)(v). The petitioner's first motion to reopen and reconsider were dismissed as untimely filed. The petitioner did not allege

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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).

and submitted no evidence with either of his two previous motions to establish that his failure to file his motion to reopen within the prescribed time was beyond his control. *See* 8 C.F.R. § 103.5(a).

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 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 cannot be used to raise a legal argument that could have been raised earlier in the proceedings. 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 may 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. 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. *See Matter of Medrano*, 20 I&N Dec. 216, 219 (BIA 1990, 1991).

In this case, the petitioner failed to support his motion with any legal argument or precedent decisions to establish that the AAO’s prior decision was based on an incorrect application of law or USCIS policy. The motion to reconsider will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. 8 C.F.R. § 103.5(a)(4) states that “[a] motion that does not meet applicable requirements shall be dismissed.” Accordingly, the motion will be dismissed, the proceedings will not be reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

**ORDER:** The motions are dismissed. The AAO’s previous decisions are affirmed and the petition remains denied.