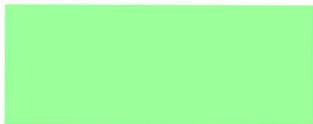




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: **OCT 08 2013**
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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The petitioner filed a subsequent appeal. The Administrative Appeals Office (AAO) summarily dismissed the appeal and dismissed three subsequent motions to reopen and reconsider. The matter is now again 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 self-petitioner seeks classification 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 children's ministry assistant for [REDACTED] in [REDACTED] Indiana.

The director denied the petition on May 4, 2010. The self-petitioner appealed the decision and the AAO summarily dismissed the appeal on January 30, 2012. The petitioner filed a motion to reopen and a motion to reconsider the AAO's decision on March 22, 2012. On September 10, 2012, the AAO dismissed the motions as untimely filed and noted that, regardless of the untimely filing, the motions would be dismissed for failing to meet the requirements at 8 C.F.R. §103.5(a) as the petitioner failed to present any arguments or evidence that the AAO's summary dismissal of the appeal was improper or erroneous. The petitioner filed two subsequent motions to reopen and reconsider on September 25, 2012 and February 26, 2013. Those motions were dismissed by the AAO on January 30, 2013 and May 24, 2013, respectively, 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.

The petitioner filed the instant motions to reopen and reconsider on June 25, 2013. In support of the instant motions, the petitioner submits a photocopy of the visa page of his passport, two letters of recommendation, and copies of his Form W-2, Wage and Tax Statements form 2007, 2008, and 2009. On the Form I-290B, Notice of Appeal or Motion, the petitioner argues that he meets religious work experience requirements for classification as a special immigrant religious worker.

The evidence submitted and the petitioner's arguments do not address the AAO's most recently issued decision. Rather, the arguments and the submitted evidence relate to the eligibility issues discussed in the director's May 4, 2010 decision. As noted in the AAO's January 30, 2013 and May 24, 2013 decisions, on motion, the AAO will only consider arguments and evidence relating to the grounds underlying the AAO's most recent decision. With the instant filing, the petitioner bears the burden of establishing that the AAO's May 24, 2013 dismissal of the petitioner's third motions to reopen and reconsider was in error. If the petitioner can demonstrate that the AAO erred by dismissing those motions, then there would be grounds to reopen or reconsider the proceeding. The petitioner has not done so in this proceeding. The filing of a motion does not present a new opportunity as though the dismissal of the previous motion never existed. The petitioner has not shown that his February 26, 2013 filing met the requirements of a motion to reopen or a motion to reconsider, and the AAO will not, at this late date, entertain the petitioner's untimely arguments regarding the underlying decisions to deny the petition.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. *See* 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 petitioner’s statement and evidence on motion reveals no fact that could be considered “new” under 8 C.F.R. § 103.5(a)(2) and, therefore, cannot 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 cannot be used to raise a legal argument that could have been raised earlier in the proceedings. *See Matter of Medrano*, 20 I&N Dec. 216, 220 (BIA 1990, 1991). 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 could 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. *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 petitioner failed to support the instant motion with any legal argument or precedent decisions to establish that the AAO’s May 24, 2013 decision was based on an incorrect application of law or USCIS policy. Accordingly, the motion to reconsider will be dismissed.

In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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

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 NEW COLLEGE DICTIONARY, (3d Ed 2008). (Emphasis in original).