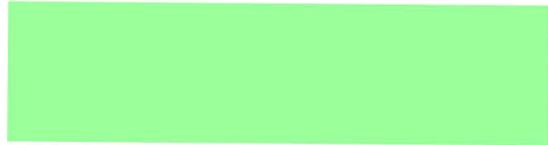




U.S. Citizenship  
and Immigration  
Services

(b)(6)

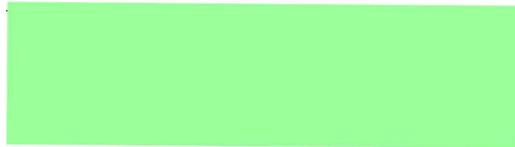


DATE: **OCT 10 2013** OFFICE: CALIFORNIA SERVICE CENTER FILE:

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 (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 AAO dismissed a subsequent appeal. The AAO granted the petitioner's motion to reopen and reconsider, affirmed its prior decision, and entered a separate finding of willful misrepresentation of a material fact. The AAO later dismissed the petitioner's second motion to reopen and reconsider. The matter is now before the AAO on a motion to reconsider. The AAO will dismiss the motion.

The petitioner is identified as "a nonprofit religious organization . . . [that] has participated in the establishment of twelve (12) non-English speaking Presbyterian churches" throughout the United States. The petitioner filed the Form I-360 petition on January 31, 2007, seeking 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 the pastor of the [REDACTED] New York.

The director initially denied the petition on January 24, 2009, on four grounds: (1) the beneficiary did not originally enter the United States solely for the purpose of carrying on the vocation of a minister; (2) the petitioner had not established that it would adequately compensate the beneficiary; (3) the petitioner had not established that the beneficiary had the required two years of continuous experience immediately preceding the filing of the petition; and (4) the petitioner did not successfully complete compliance review.

The petitioner appealed the decision on February 24, 2009. The AAO dismissed the appeal on January 13, 2010, overturning ground (1) but concurring with the other three grounds. The AAO stated that the petitioner, on appeal, had not addressed ground (4) at all. The AAO also cited an additional ground for denial of the petition, stating that the petitioner had not executed the required employer attestation.

The petitioner filed its first motion on February 12, 2010. On November 18, 2011, the AAO affirmed the previous decision and found that both the petitioner and the beneficiary had willfully misrepresented a material fact in furtherance of the petition. This finding concerned evidence that the beneficiary pursued several secular business ventures during a time when he was purportedly working solely as a minister.

The petitioner filed its second motion on December 20, 2011. The AAO dismissed that motion on July 31, 2012, stating that the motion did not meet the requirements of a motion to reopen or a motion to reconsider.

The petitioner filed its third and latest motion on September 6, 2012. The petitioner has not filed a motion to reopen, seeking to introduce new evidence into the record. The motion solely seeks reconsideration, alleging error in previous AAO decisions. The AAO has already issued a decision based on the full record of proceeding and will not readjudicate the petition here. The present decision is limited to consideration of specific points that the petitioner raises in the latest motion.

(b)(6)

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States—

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before September 30, 2015, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before September 30, 2015, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

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. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Counsel makes two assertions on motion: first, the AAO should have given more consideration to evidence submitted with the second motion; and second, the AAO should not have entered a finding of willful misrepresentation of a material fact against the beneficiary. Both of these points concern the beneficiary's secular business ventures. The following summary provides necessary context.

USCIS learned that the beneficiary held a Class E New York driver's license. That class of license is exclusively for taxi and livery drivers. The beneficiary's federal income tax returns for 2005, 2006 and 2007 all listed his occupation as "Limo Service," consistent with his Class E driver's

license. The director and the AAO both concluded that these materials were strong evidence of the beneficiary's employment as a limousine driver.

The director first raised the above issue in a notice of intent to deny the petition, issued on June 23, 2008. In response to that notice, a previous attorney, [REDACTED] stated that "the beneficiary has been working solely, and fulltime as a Pastor. He has never worked as a Limo Service Driver." The petitioner submitted a July 8, 2008 letter, attributed to accountant [REDACTED] claiming that the accountant mistakenly entered the wrong occupation on the beneficiary's income tax returns. On the same date, the beneficiary signed amended tax returns for the 2005-2007, all changing his occupation to "Pastor."

On appeal from the denial of the petition, the petitioner submitted a copy of the beneficiary's newly issued Class D driver's license.

In a letter dated September 29, 2011, the AAO informed the petitioner: "a USCIS search of automobile registration records showed that, between 2001 and 2008, the beneficiary has registered at least 13 vehicles in New York State for 'business use,' including a 2000 Ford Explorer sport utility vehicle, a 2008 Honda Odyssey EXL Sport Van, and several Lincoln Town Cars." The AAO also informed the petitioner of evidence that the beneficiary owned and operated a restaurant.

Based on the above information, the AAO, in its November 18, 2011 decision, found:

that the petitioner knowingly submitted documents containing false statements in an effort to mislead USCIS and the AAO on an element material to the beneficiary's eligibility for a benefit sought under the immigration laws of the United States. *See* 18 U.S.C. §§ 1001, 1546. The AAO finds that the beneficiary participated in this willful misrepresentation, for example by filing amended income tax returns and changing his driver's license classification in an attempt to conceal his previously reported income from driving a limousine. The AAO will enter a finding of willful misrepresentation of a material fact.

On motion from the AAO's November 2011 decision, the petitioner provided web links to establish the requirements to operate a taxi or limousine service in [REDACTED] New York. The petitioner also submitted documentation showing registration of three vehicles in the beneficiary's name. One submitted printout shows the information sideways on the page, with some of the information cut off. The incomplete printout appears to be from an insurance company, as it lists information about three automobile insurance policies, a homeowner's policy, and a church policy.

In dismissing the motion on July 31, 2012, the AAO stated:

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). The petitioner's motion is not an

opportunity for the petitioner to correct its own defects in the record. . . . The petitioner was previously put on notice of the requirements for eligibility by the regulations and by the previous decisions by both the director and the AAO. The evidence could also have been submitted on appeal or on the previous motion as both the director's decision and the AAO's original decision specified the deficiencies in the petitioner's evidence, citing the appropriate regulations. Therefore, the evidence submitted on motion will not be considered "new" and will not be considered a proper basis for a motion to reopen. . . .

In the motion to reconsider, the petitioner reiterates arguments already addressed by the AAO in its dismissal of the original appeal. . . . 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.

On motion from the latest decision, counsel states:

the Petitioner asserts that the AAO erred in concluding that the petitioner's previous motion to reopen and reconsider filed in December 2011 revealed no fact that could be considered "new" under 8 C.F.R. Section 103.5(a)(2).

. . . [T]he AAO raised a "new" issue after discovering and citing "new" evidence. . . . [T]he Petitioner should be fairly given an opportunity to provide "new" evidence to respond to the AAO's "new" findings. . . . The Petitioner did not have the need to present such evidence until the need [arose] to rebut [the] AAO's "new" findings.

Counsel does not identify any new issue that the AAO did not raise until it issued its first decision on motion in November 2011. The AAO did raise new issues in its September 2011 letter, but the

proper time to introduce rebuttal evidence was in response to that letter. Indeed, the specific purpose of that letter was to afford the petitioner an opportunity to respond to additional derogatory evidence before the AAO issued its decision on the petitioner's motion.

Counsel, on motion, does not identify the new evidence that purportedly did not receive due consideration, or explain how the AAO's failure to consider that evidence prejudiced the outcome of the AAO's decision on motion. The general assertion that the AAO should have considered unspecified new evidence does not establish that the AAO's decision was incorrect.

Counsel's second assertion on motion is as follows:

The Petitioner is also seeking the AAO to reconsider and withdraw its previous entry of a finding of willful misrepresentation of a material fact by the beneficiary. As the I-360 petition is filed by the Petitioner, not by the Beneficiary, all evidence and statements submitted in support of the said petition are also signed by and provided directly by the Petitioner to the government, and NOT by the beneficiary. In addition, filing amended income tax returns to rectify mistakes, that were readily and entirely admitted made solely by the beneficiary's accountant in a sworn affidavit, is legally permissible and acceptable by the Internal Revenue Service; as well as legally applying for a new state driver license under a different classification in New York State. Absent any finding of fraud or guilt by the other government or state administrative and law enforcement agencies, AAO's finding and entry of willful misrepresentation of a material fact by the beneficiary shows undue prejudice against the beneficiary, and is completely without any legal ground or authority.

Counsel does not explain why a "finding of fraud or guilt" must arise from "other government or state administrative and law enforcement agencies." A finding of material misrepresentation is not a criminal conviction, and requires no action by a court of law. It is, instead, an administrative finding that relates directly to a petition for an immigration benefit, and therefore it is appropriate that the finding should originate from immigration authorities. Counsel cites no precedent decision or other legal authority to support the claim that the AAO's finding "is completely without any legal ground or authority."

Counsel is correct that the petitioner, not the beneficiary, is the affected party in this proceeding, as the USCIS regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) defines that term. This, however, means only that the beneficiary lacks standing to appeal or otherwise contest the denial of the petition. The AAO specified that the finding of misrepresentation was "a separate finding" from the dismissal of the appeal.

While the petitioner signed and filed the petition, the beneficiary personally participated in actions intended to support the petition, and thereby obtain immigration benefits for himself. The beneficiary signed the amended income tax returns in 2008 and personally obtained a new driver's license in 2009, both actions precipitated by adverse notices from USCIS relating to the petition.

Counsel is correct in stating that there is nothing inherently illegal, fraudulent, or deceptive in filing an amended tax return or obtaining a new driver's license. It is the context of those actions, however, that is of concern in this proceeding.

The beneficiary identified his occupation as "Limo Service" on federal and state income tax returns for several consecutive years. The assertion that the beneficiary did not personally prepare those returns does not relieve him of responsibility for the accuracy of their content. On both the federal and state returns, the "occupation" line is immediately adjacent to the "signature" line, and therefore the beneficiary knew, or should have known, that the returns contained that information.

By signing the original income tax returns, identifying his occupation as "Limo Service," the beneficiary took responsibility for the contents of the returns. *Cf. Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.*, 498 U.S. 533 (1991) (Represented party who signs his or her name to documents filed in court bears personal, nondelegable responsibility to certify truth and reasonableness of document and failure to meet that duty subjects signor to Rule 11 sanctions). The beneficiary cannot disclaim responsibility for the contents of the amended tax returns. The amended returns made no changes except to change the stated occupation from "Limo Service" to "Pastor." The beneficiary made this change in response to USCIS's inquiry. The change had no effect on his tax liability; it was material only to the immigrant petition then pending on his behalf. In this way, the execution of the new federal income tax returns was an action that the beneficiary undertook in furtherance of the immigrant petition filed on his behalf.

The beneficiary's Class E driver's license, issued October 31, 2005, had an expiration date of January 6, 2013. His subsequent Class D license showed an issue date of February 3, 2009. Therefore, the issuance of the Class D license in 2009 was not a routine matter of replacing an expiring license. The beneficiary had to take the active step of applying for a new license under a different class, and he did so ten days after the director denied the petition. Because of this timing, and because the petitioner immediately provided a copy of the new license to USCIS, it is evident that the beneficiary took this action in furtherance of the immigrant petition filed on his behalf.

It has been the petitioner's position that the State of New York mistakenly issued the beneficiary a Class E driver's license, and that, coincidentally, the beneficiary's tax preparer mistakenly listed the beneficiary's occupation as "Limo Service" on income tax returns for three consecutive years – an error that the beneficiary himself took no evident action to correct at the time. This claimed combination of events is less probable than the conclusion that the beneficiary was, in fact, operating a limousine service at the time, particularly in light of other evidence (discussed in previous AAO decisions) that the beneficiary has engaged in other secular business ventures.

The beneficiary signed income tax returns in 2006-2008 that identified his occupation as "Limo Service," and received a Class E driver's license in 2005, but took no corrective action until years later when USCIS raised concerns about those materials. At that point, the beneficiary, not the petitioner, executed amended tax returns and applied for a new driver's license. The beneficiary is

legally responsible for those actions, undertaken for the specific purpose of overcoming grounds for denial of the immigrant petition. The AAO has found that the beneficiary operated a limousine service, and the beneficiary's attempts to undo the evidence to that effect amount to misrepresentation of a material fact in an attempt to secure immigration benefits.

The petitioner has not shown that the AAO erred, as a matter of fact or law, in entering a finding that the beneficiary willfully misrepresented a material fact relating to this proceeding.

The petitioner's motion is not supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy, and it does not establish that the decision was incorrect based on the evidence of record at the time of the initial decision. Therefore, the motion does not meet the regulatory requirements at 8 C.F.R. ^ 103.5(a)(3). The regulation at 8 C.F.R. ^ 103.5(a)(4) therefore requires dismissal of the motion.

The AAO will dismiss the motion for the above stated reasons. 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, the petitioner has not met that burden.

**ORDER:** The motion is dismissed. The prior decisions of the AAO are affirmed and the petition remains denied.

**FURTHER ORDER:** The AAO's finding that the petitioner and beneficiary knowingly submitted documents containing false statements in an effort to mislead USCIS and the AAO on an element material to the beneficiary's eligibility for a benefit sought under the immigration laws of the United States is affirmed.