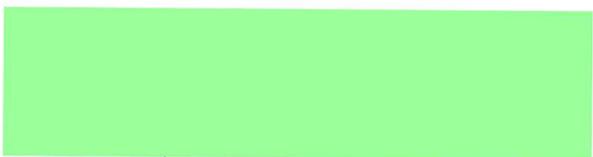


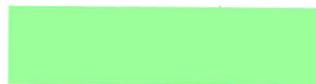


U.S. Citizenship  
and Immigration  
Services

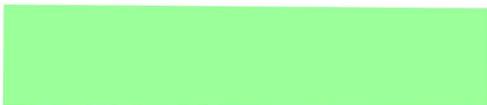
(b)(6)



Date: **APR 01 2014** 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,

*Ubeadnick*

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, initially approved the employment-based immigrant visa petition on December 12, 2005. On further review, the director determined that the beneficiary was not eligible for the visa preference classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke (NOIR) the approval of the preference visa petition stating the reasons therefore and subsequently exercised her discretion to revoke the approval of the petition on January 3, 2008. The director granted a subsequent motion to reopen and reaffirmed her decision on November 19, 2008. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO remanded the matter and the director again reaffirmed the revocation and certified the decision to the AAO for review. The AAO affirmed the revocation of the petition and dismissed a subsequent motion to reopen and reconsider. The matter is now before the AAO on a second motion to reopen and 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 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 religious instructor and religious education director.

In the decision dismissing the petitioner's appeal, the AAO specifically and thoroughly discussed the petitioner's evidence and determined that the petitioner failed to establish that the beneficiary met the eligibility requirements under 8 C.F.R. § 204.5(m)(2005). The director found that the site investigation called into question the actual duties of the proffered position. The investigating officer concluded, based on a conversation with [REDACTED] and his wife, that the beneficiary was not performing the duties of a religious instructor and religious education director as asserted by the petitioner at the time of filing the petition, but was instead working as a pianist and music teacher. Former counsel asserted on appeal that the beneficiary's duties as a pianist were secondary to her work as a religious instructor and religious education director. Former counsel also asserted that a single site visit was not a sufficient to provide a proper basis for revoking the petition. However, the AAO found that the petitioner had not submitted sufficient documentary evidence to support counsel's claim that the beneficiary was performing the duties of a religious instructor and religious education director, rather than working as a pianist. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The AAO dismissed the petitioner's previous motion to reopen and reconsider, finding that there were no new facts and no specific arguments regarding errors of fact or law.

The AAO noted that, pursuant to section 205 of the Act, 8 U.S.C. § 1155, the Secretary of the Department of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." The AAO additionally noted the following statement by the Board of Immigration Appeals:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

*Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

With the instant motion, the petitioner submits a brief from counsel, notarized affidavits from several individuals within the petitioning church, and copies of documents already in the record. Counsel's brief and the submitted affidavits do not, however, address the AAO's most recently issued decision. Rather, the documents relate to the eligibility issues discussed in the director's decision and the AAO's decision on appeal. On motion, the AAO will only consider arguments and evidence relating to the grounds underlying the most recent decision. The petitioner bears the burden of establishing that the AAO's dismissal of the petitioner's prior motion to reopen and reconsider was in error. The petitioner has not claimed or shown that its June 11, 2012 filing met the requirements of a motion to reopen or reconsider or that the AAO otherwise erred in its prior determination on motion.

Regardless, 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). Although the petitioner submits new affidavits in support of the current motion, the affidavits do not provide new facts. Rather, the affidavits are cumulative evidence, containing the same assertions made previously that the beneficiary works as a religious instructor and religious education director. All of the testimonial evidence submitted on motion is either duplicative of statements made in prior affidavits or was previously available and could have been provided on appeal or in the previous motion. In addition, the petitioner's arguments on motion are not new facts. The motion to reopen will be dismissed.

In the motion to reconsider, counsel and the petitioner reiterate prior arguments already addressed by the AAO, namely that the previously submitted evidence shows that the beneficiary was employed as a religious instructor and religious education director and that the findings of the site visit are insufficient justification for revocation of the petition. 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).

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 or policy 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 petitioner has failed to raise such allegations of error in its 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 May 11, 2012, is affirmed, and the petition remains denied.