U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: AUG 0 1 2014 OFFICE: CALIFORNIA SERVICE CENTER FILE [redacted]

IN RE: Petitioner: [redacted]
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 appealed the decision to us at the Administrative Appeals Office (AAO). We remanded the petition to the director for a new decision based on revised regulations. The director again denied the petition and certified the decision to us. We affirmed the director's decision in part. The petitioner then filed two motions to reconsider, both of which we dismissed. The matter is now before us on a motion to reopen and reconsider. We will dismiss the motion. The petition will remain denied.

The petitioner is a Christian church of the denomination. It filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on July 26, 2006, seeking to classify the beneficiary as a special immigrant religious worker under 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. The director denied the petition on March 11, 2010, having determined that the petitioner had not established (1) that the beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition, and (2) that the denomination recognizes the beneficiary's position as a religious occupation. In its decision of January 30, 2013, the AAO withdrew the director's first finding but affirmed the second and found that the petition was not approvable. The AAO then dismissed the petitioner's first motion to reconsider on October 8, 2013, and the second motion to reconsider on March 20, 2014.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). 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 Services (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).

At issue is whether the petitioner intends to employ the beneficiary in a religious occupation. "Religious occupation" means an occupation that meets all of the following requirements:

> (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.
>
> (B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.
>
> (C) The duties do not include positions that are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible.

> (D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

8 C.F.R. § 204.5(m)(5). In an initial statement dated July 19, 2006, , senior pastor of the petitioning church, listed the duties of the religious instructor position:

> 1) prepares for Bible study sessions; 2) teaches Bible to existing and potential members of our church; 3) leads prayer session for Bible study group; 4) leads evangelism class; 5) provides religious counseling; 6) encourages students to attend Bible study classes; 7) visits students for conference and providing help; and 8) plans and directs various education programs of our church.

An accompanying schedule, also prepared by Pastor provided details about teacher's meetings, counseling sessions, Bible teaching and other activities, including ten hours of duties described as "administrative."

The director issued a request for evidence (RFE) on December 11, 2006, instructing the petitioner to submit, among other things, further information about the beneficiary's intended position. The petitioner's response to the December 2006 RFE consisted of Internal Revenue Service documentation regarding the beneficiary's 2006 compensation.

In response to a second RFE issued on March 14, 2007, Pastor provided a somewhat revised list of responsibilities:

> 1) prepares for Bible study sessions; 2) teaches Bible to existing and potential members of our church; 3) leads prayer session for Bible study group; 4) provides religious counseling; 5) visits members for providing help; 7) [*sic*] plans and directs various education programs of the church.

The petitioner's response included copies of the beneficiary's "ministry schedules" for 2004, 2005 and 2006. The 2006 schedule specified that the petitioner led meetings of "18 teachers & volunteers." On several occasions, when called upon to list or identify its paid employees, the petitioner identified no other teachers. Therefore, the record shows that most of the petitioner's religious instructors are unpaid volunteers; the duties do not intrinsically constitute an occupation.

The director issued a new RFE on December 28, 2009, instructing the petitioner to provide details about the beneficiary's position and to "[s]ubmit documentary evidence that the governing body, of Texas, recognizes the beneficiary's position as directly related to the religious creed of the denomination. Also submit documentation showing how the governing body, of Texas, defines the beneficiary's position."

In response, the petitioner executed an employer attestation indicating that the beneficiary:

> 1) prepares for Bible study sessions; 2) teaches Bible to existing and potential members of our church; 3) leads prayer session for Bible study group; 4) provides religious counseling; 5) visits members for providing help; 7) [*sic*] plans and directs various education programs of the church; and 8) leads children's worship services.

Pastor stated: "The job title of the beneficiary is Director of Children [*sic*] Christian Education Department and Church Office Secretary." Yet another version of the beneficiary's work schedule included several revisions, including daily "Dawn Prayer Meetings" beginning at 5:50 a.m. No previous schedule showed any duties before 8:00 a.m. Nine and a half hours of the beneficiary's weekly schedule comprised secular duties such as scheduling visitations, "church office works," and helping "to manage the language classes."

Pastor stated: "The beneficiary's role at the church is traditionally recognized by Convention," but the petitioner submitted no evidence to support this claim. 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 director denied the petition on March 11, 2010, and certified the decision to us. The director stated:

> The petitioner was clearly advised to submit documentary evidence that the governing body, of Texas, recognizes the beneficiary's position as directly related to the religious creed of the denomination. The petitioner was also requested to submit documents showing how the governing body defines the beneficiary's position.

The director acknowledged the petitioner's claim of denominational recognition, but found that "the petitioner has not substantiated this claim." The director noted that some of the beneficiary's duties are admittedly administrative, and found that what remained – including prayer meetings, leadership seminars, and counseling – "are vague and an assortment of related and unrelated duties" that did not add up to a single, coherent job description.

In a decision dated January 30, 2013, we affirmed the denial of the petition, stating:

> The petitioner's own evidence indicates that most of its instructors are unpaid volunteers, and that the beneficiary's status as a paid employee rests at least in part on her performance of secular, administrative duties as the "Church Office Secretary."
>
> There are, undoubtedly, religious elements in the beneficiary's stated duties with the petitioning entity. Nevertheless, the record indicates that religious instruction, by itself, is not grounds for paid employment with the petitioning church, which has claimed 18 teachers but submitted tax records showing, at most, four employees. The

> changing nature of the beneficiary's duties, as shown in the various schedules, suggests that many of those duties are not integral to the beneficiary's position but, rather, have been added on in order to justify a full-time work schedule. The AAO will affirm the director's unrebutted finding that the petitioner has not shown that the beneficiary's position meets all of the regulatory requirements of a religious occupation.

On March 7, 2013, the petitioner filed a motion to reconsider our January 2013 decision. Pastor stated:

> I submitted all evidences issued by the denomination to prove the denomination recognizes [t]he beneficiary's Position as a Religious Occupation on December 11, 2006 to USCIS California Services [*sic*] Center. But USCIS did not accept and consider all evidences issued by the denomination to prove the denomination recognizes The beneficiary's Position as a Religious Occupation as affordable evidence.

In dismissing the motion on October 8, 2013, we noted several factually incorrect statements in the motion. Most significantly for the matter at hand, we stated:

> The record shows that the petitioner's response to the December 2006 RFE did not contain any documentation from, or relating to, the Convention or other denominational authorities. . . .
>
> The record does not support Pasto s claim that the petitioner submitted evidence "issued by the denomination to prove the denomination recognizes [t]he beneficiary's Position as a Religious Occupation on December 11, 2006." The petitioner has therefore failed to establish grounds for reconsideration of the AAO's prior decision.

The petitioner filed a second motion to reconsider on November 6, 2013. Pastor s statement in that motion was almost identical to the statement submitted with the first motion, filed in March 2013. In dismissing the motion on March 20, 2014, we stated: "The newly dated statement does not address or overcome the AAO's October 2013 decision. The petitioner cannot prolong the proceeding indefinitely by repeating claims that the AAO has already addressed and rebutted, and the resubmission of a prior statement is not grounds for reconsideration."

One of the claims that Pasto repeated was that the petitioner's response to the December 2006 RFE included "evidences issued by the denomination." We stated:

> The record shows that the petitioner had not submitted any documentation from, or relating to, the Convention or other denominational authorities. The director issued a request for evidence, instructing the petitioner to submit evidence

> regarding the beneficiary's occupation, but the petitioner's response consisted only of Internal Revenue Service documents relating to the beneficiary's compensation. On this basis alone, the petition may not be approved. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the benefit request. 8 C.F.R. § 103.2(b)(14).
>
> Pastor , in the latest motion, repeats the claim that the petitioner submitted the required documentation, but he does not identify the evidence he claims to have submitted, and he does not address the AAO's response from the first time Pastor made the same claim. Repetition of an unsupported claim is not grounds for reconsideration of the AAO's prior decision.

The petitioner filed the latest motion on April 21, 2014. The motion includes a new statement, co-signed by Pastor identified as "chairman of deacon"; printouts of online job announcements posted by various churches; and letters from two local ministers.

Motions to reopen and reconsider serve certain limited purposes. They are not a means for the petitioner to keep a proceeding open indefinitely. The purpose of a motion to reconsider, defined in the regulation at 8 C.F.R. § 103.5(a)(3), is to contest the correctness of the original decision based on the previously established factual record. A motion to reconsider based on a legal argument that could have been raised earlier in the proceedings will be denied. *See Matter of Medrano*, 20 I&N Dec. 216, 219-20 (BIA 1990, 1991). The "reasons for reconsideration" that may be raised in a motion to reconsider should flow from new law or a *de novo* legal determination reached by the AAO in its decision that could not have been addressed by the party. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). 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. *Id.* at 58. 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's latest motion to reconsider does not attempt to show prior USCIS error. Instead, it endeavors to make a new claim of eligibility based on new evidence.

The petitioner's latest motion raises no legal arguments. Instead, the petitioner acknowledges that it had previously failed to submit requested and required documentation, but attributes this failure to "miscommunication or lack of understanding of the instructions." The petitioner's latest submission does not meet the requirements of a motion to reconsider.

The submission of new evidence is consistent with the regulatory definition of a motion to reopen at 8 C.F.R. § 103.5(a)(2), but it does not require us to grant the motion. The director first instructed the petitioner to submit information from denominational authorities in December 2009. Multiple notices since that time have noted the absence of the requested information. Now, more than four years after the initial request, the petitioner has attempted to address that request. The petitioner offers no

explanation for its failure to submit the materials previously. A motion to reopen permits the petitioner to introduce previously unavailable documentation into the record; it is not a supplemental opportunity to submit materials that the petitioner should have submitted earlier.

An incomplete response to an RFE will be considered a request for a decision on the record. *See* 8 C.F.R. § 103.2(b)(11). Failure to submit requested evidence is grounds for denial of the petition. *See* 8 C.F.R. § 103.2(b)(14). Therefore, when instructed to submit particular evidence, the petitioner must do so in a timely response to the RFE; there is no open-ended opportunity to submit the materials later in the proceeding, and we will not reopen the proceeding to accept evidence that the petitioner should have submitted in response to an earlier RFE.

Furthermore, the newly submitted materials would not have overcome the denial of the petition. Dr. interim pastor of asserts:

> The staff position [the petitioner has] outlined is very common among Baptist, evangelical, and non-denominational churches. In Baptist life, every local church is autonomous and writes its own job descriptions and titles. . . . The title Director of Christian Education is also sometimes called Minister of Education; Educational director, or minister of a specific age group in the church such as Minister of Adults, Minister of Youth, or Minister of Children. All of these are commonly accepted religious staff positions in churches.

Rev. executive director of the states that the Association "does not control [local] churches. . . . As a result each church decides to hire staff as they sense the need and direction of the Lord."

The job announcements submitted on motion advertise positions with titles such as "Children's Minister," "Director of Children's Ministries," and "Mother's Day Out & Preschool Director." All but one of the submitted job descriptions are for part-time positions, which is consistent with our earlier observation that the petitioner appears to have added secular, administrative functions to the beneficiary's job description in order to justify a full-time schedule. The only documented full-time position is "Associate Pastor of Children's Ministries," which pays between $40,000 and $60,000 per year, roughly double the beneficiary's documented compensation of $18,000 to $25,000 per year. The job descriptions, apparently written by the respective churches, vary considerably in degree of detail provided, and therefore they do not permit a meaningful comparison to the beneficiary's own job description (which has, itself, seen several changes over the course of this proceeding).

The materials submitted on motion do not resolve the concerns articulated in prior decisions, and they do not overcome the petitioner's failure to submit them when requested in 2009. The regulations warrant denial of a petition when the petitioner fails to submit requested evidence; they do not require reopening of the proceeding if the petitioner submits those materials at a later date.

The petitioner's latest motion does not meet the requirements of a motion to reopen under 8 C.F.R. § 103.5(a)(2) or a motion to reconsider under 8 C.F.R. § 103.5(a)(3), and as such the regulation at 8 C.F.R. § 103.5(a)(4) requires dismissal of the motion.

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 petition remains denied.