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 2 0 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:

[redacted]

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 Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before us on a motion to reopen and a motion to reconsider. The motion to reopen will be granted for consideration of new evidence submitted in support of the motion. The motion to reconsider shall be dismissed. Our previous decision 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 minister. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition. In our December 19, 2012 decision, we agreed with the director's determination.

In our decision dismissing the petitioner's original appeal, we specifically and thoroughly discussed the petitioner's evidence and determined that the beneficiary lacked employment authorization and lawful immigration status during a portion of the two years immediately preceding the filing of the petition, and that the petitioner failed to resolve inconsistencies in the submitted evidence regarding the beneficiary's employment history. The petitioner contended on appeal that during the period without lawful status and employment authorization, the beneficiary was "engaged in religious training programs instead of full time employment for salary," and that this period meets the requirements of a qualifying break in religious work under 8 C.F.R. § 204.5(m)(4). We found that this assertion, made for the first time on appeal, was inconsistent with the petitioner's prior response to a request for evidence that specifically asked about any breaks in the beneficiary's work, and that it conflicted with previously submitted evidence of pay statements during the period in question. We also found that the petitioner failed to submit any documentary evidence in support of its assertion that the beneficiary participated in religious training programs. We determined, therefore, that the petitioner did not meet the regulatory requirements of 8 C.F.R. §§ 204.5(m)(4) and (11).

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). In the motion to reopen, the petitioner submits a brief along with letters of reference and good works by the beneficiary from various individuals and pictures of the beneficiary performing his ministry. The petitioner states that the equities and special circumstances of the case qualify the beneficiary for classification as a special immigrant religious worker. The petitioner asserts that the beneficiary worked wherever the church asked him to work and that he has faithfully served his church and the community. The petitioner again contends that the beneficiary pursued religious training programs during the period in which he lacked employment authorization. The petitioner states: "What little compensation [the beneficiary] received [during this period], was intended to help him with his expenses." The fact remains that the beneficiary lacked employment authorization and lawful immigration status during portions of the two years immediately preceding the filing of the petition. The petitioner has not resolved the inconsistencies discussed in our previous decision, and again fails to provide evidence of the beneficiary's participation in religious training programs. Accordingly, the evidence submitted in support of the motion to reopen does not overcome the basis for denial of the petition set forth in our December 19,

2012 decision dismissing the petitioner's appeal. The evidence does not establish that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date 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 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).

In support of its motion to reconsider, the petitioner asserts that we were incorrect to find the beneficiary lacked the requisite qualifying experience based on the period during which he lacked lawful status and employment authorization. The petitioner contends that "[t]his ensnares [the beneficiary] in the proverbial 'Catch 22,' requiring him to be employed but simultaneously prohibiting employment." The petitioner also argues, as stated above, that the beneficiary "pursued religious training programs rather that full time employment for salary with the church" during the period in question, and that this constitutes a qualifying break under 8 C.F.R. § 204.5(m)(4). That regulation specifically requires that the beneficiary must have been working in lawful status (if in the United States), and that a qualifying break must not involve unauthorized employment. Further, the petitioner has provided no documentary evidence, either in the initial record, on appeal or on motion, to support the assertion that the beneficiary participated in any religious training programs between August and November of 2010. The lack of documentation was specifically noted in our December 19, 2012 decision denying the appeal. 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 petitioner has not established that our December 19, 2012 decision was incorrect and based on an incorrect application of law or USCIS policy. The petitioner has cited no precedential authority to that effect. 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 motion to reopen is granted. The motion to reconsider is dismissed. The decision of the AAO dated December 19, 2012, is affirmed, and the petition remains denied.