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

DATE: DEC 29 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 (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, Nebraska Service Center (NSC), initially approved the employment-based immigrant visa petition but the Director, California Service Center (CSC), later revoked that approval on notice. The petitioner appealed the decision to the Administrative Appeals Office (AAO), and we withdrew the decision and remanded the matter for further consideration. The director again revoked the approval of the petition and certified the decision to us for review. We affirmed the director's decision. The petitioner then filed a motion to reopen and reconsider the decision. We dismissed the motion at untimely. The matter is now before us on a second motion to reopen and reconsider. We will deny the motion. The revocation of the approval of the petition remains in effect.

The petitioner is an Islamic community center including a mosque and a school. It filed Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on October 2, 2003, 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 an imam. The Director, NSC, approved the petition on June 22, 2004, but the Director, CSC, subsequently revoked the approval on December 12, 2011 because the petitioner had failed to establish the continued existence of the job offer in place at the time of filing.

We affirmed the director's certified decision on February 1, 2012. In that decision, we stated: "All motions must be submitted to the office that originally decided your case." The petitioner attempted to file the motion with the AAO on March 2, 2012. We returned the filing to the petitioner because we cannot accept direct filings. The petitioner then submitted the motion to the CSC, which forwarded the motion to the NSC where the petitioner had originally filed the petition. The NSC received the motion on March 14, 2012, 42 days after the appellate decision that the motion sought to reopen. We dismissed the motion as untimely on May 8, 2012. The petitioner filed a timely motion to reopen and reconsider on June 5, 2012, which is now before us.

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).

In our May 2012 decision, we stated:

> Every application, petition, appeal, motion, request, or other document . . . , notwithstanding any other regulations to the contrary, must be filed with the location and executed in accordance with the instructions on the form. 8 C.F.R. § 103.2(a)(1).

> Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before USCIS, filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of USCIS where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. 8 C.F.R. § 103.5(a)(1)(i). If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.8(b). The date of filing is not the date of submission, but the date of actual receipt with the required fee. *See* 8 C.F.R. § 103.2(a)(7)(i). Therefore, USCIS had to receive a properly filed motion, at the proper location, no later than 33 days after the date of the AAO's dismissal notice.
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> A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The phrase "shall be dismissed" indicates that the regulation is a requirement, rather than an option for USCIS or the AAO to exercise at its discretion.
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> . . . The instructions to Form I-290B [Notice of Appeal or Motion] advise: "Do **not** send your appeal or motion directly to the Administrative Appeals Office (AAO)" (emphasis in original). Nevertheless, the petitioner, through counsel, sent the motion directly to the AAO. . . .
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> The regulation at 8 C.F.R. § 103.5(a)(1)(i) does not provide any circumstances to allow for the untimely filing of a motion to reconsider. The same regulation allows for the untimely filing of a motion to reopen, at USCIS's discretion, only if the petitioner demonstrates that the delay was reasonable and was beyond the control of the petitioner.
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> Counsel contends that the late filing was beyond the petitioner's control because it was counsel, not the petitioner, who made the untimely filing. The AAO rejects this reasoning, because it would effectively negate the filing deadline for petitioners with legal representation. The petitioner, by hiring legal counsel, did not exempt itself from responsibility for following proper procedure. Counsel acts on the petitioner's behalf, rather than as a separate third party. The delay in proper filing was not beyond the petitioner's control, as the Form I-290B itself contained the relevant information about where to file the motion.

In the current motion, counsel again acknowledges error in misfiling the prior motion, and contends that we should have exercised discretion and accepted the untimely motion. The regulation at 8 C.F.R. § 103.5(a)(3) does not give us discretion to accept an untimely motion to reconsider, and the regulation at 8 C.F.R. § 103.5(a)(2) allows us to accept an untimely motion to reopen only under certain specified conditions.

In the prior motion and again in the current motion, the petitioner's attorney acknowledged that the first motion was untimely as a result of the attorney's error. The attorney states: "the untimely filing was a direct result of my own error and completely beyond the control of my clients."

Counsel also argues that the delay in filing was minimal; that the instructions for filing the motion were confusing; and that the CSC further delayed the filing by forwarding the motion to the NSC. The transfer of the file from the CSC to the NSC is of no consequence, because the motion was already late when the CSC received the filing on March 9, 2012. In terms of filing instructions, Form I-290B includes the unambiguous instruction "Do **not** send your appeal or motion directly to the Administrative Appeals Office." There is no reasonable interpretation of that instruction that would justify direct submission to the AAO.

The short lag between the first submission and the final filing addresses the requirement that the delay was reasonable, but not the separate requirement that it be beyond the control of the petitioner. As noted in our May 2012 decision, the hiring of an attorney does not insulate the petitioner from the consequences of failure to follow procedural rules, and a petitioner with an attorney does not stand in a different position than a self-represented petitioner.

Counsel contends that the petitioner should suffer no consequences for counsel's mistakes, and that we had cited no legal authority to support the principle that "[c]ounsel acts on the petitioner's behalf, rather than as a separate third party." Counsel cites *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988), stating that "a motion based on *Lozada* . . . [would] preserve [the petitioner's] rights."

Lozada set forth requirements for an appeal or motion based upon a claim of ineffective assistance of counsel, specifically: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not.

In this instance, counsel freely admits error, and therefore steps (1) and (2) are redundant. Counsel does not address step (3), an integral part of the *Lozada* process. *Lozada* does not indicate or imply that, if counsel voluntarily admits error, there is no need to involve disciplinary authorities. Therefore, the latest motion does not include a complete *Lozada* claim.

The motion does not meet the requirements of a motion to reopen under 8 C.F.R. § 103.5(a)(2) because the petitioner did not state any new facts to be proved in the reopened proceeding. Instead, the motion uses facts already documented in the record to support allegations of adjudicative error. For the reasons discussed above, the petitioner has not established that our May 2012 decision was in error. Therefore, the motion does not meet the requirements of a motion to reconsider at 8 C.F.R. § 103.5(a)(3). Because

the petitioner's latest motion does not meet the requirements of either a motion to reopen or a motion to reconsider, the regulation at 8 C.F.R. § 103.5(a)(4) requires its denial.

Upon review of the merits of the petitioner's March 2012 motion, however, we conclude that the petitioner would not have prevailed on the merits even if the motion had been timely.

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;
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> (ii) seeks to enter the United States—
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> > (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination . . . ; and
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> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Secretary 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."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

> 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 Dec. 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Id.* The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a

preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 589.

The revocation of the approval of the petition rests on two separate but related grounds, as discussed below.

I. Continued Existence of Job Offer

The regulation at 8 C.F.R. § 204.5(m)(4), in effect at the time the petitioner filed the petition in 2003, required the petitioner to establish the existence and terms of a qualifying job offer. The beneficiary's intention to perform qualifying religious work was not sufficient; the petition had to include a specific offer of employment for a particular, identified employer. The absence or termination of the job offer, therefore, would be grounds for denying the petition or revocation of a previous approval.

In May 2007, a USCIS officer conducted a routine site inspection at the petitioning mosque, and spoke to , president of the petitioning entity. According to the officer, Mr. stated that the beneficiary left his job with the petitioner in December 2006 because "there wasn't enough membership to support a second imam," and that the beneficiary began working for another religious institution that Mr. was not able to identify. In our January 2011 remand order, we concluded: "the petitioner's 2003 job offer appears no longer to exist, which would eliminate any justification for approving that petition."

The petitioner has subsequently disputed the USCIS officer's version of events. In a letter dated November 28, 2011, Mr. stated:

> [The beneficiary] continued to work as an Imam for our organization until late 2006, at which point he informed us that he received an offer to work for located in Chicago for a higher salary of $2,000 per month. At that time, there was not enough membership to support a salary higher than the proffered wage of $1,000 per month; and as such, [the beneficiary] stopped working for our organization at that time. However, it was always our understanding that [the beneficiary] would resume employment with our organization as an imam on a full time basis upon the granting of his green card. . . .
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> According to the Immigration Service, Mr. provided a statement to a USCIS officer during a May 2007 site visit, claiming that [the beneficiary] left our organization because there was not enough membership to support a second imam. I did not make this statement and this statement is not true. Rather, I informed the inspecting officer that [the beneficiary] left our organization because we could not offer [the beneficiary] a salary higher than the proffered wage of $1,000 based on our membership at the time. . . .

> Recently, our organization has experienced new growth in membership, and as such, it is our intention . . . to . . . increase his salary above the $1,000 per month we originally offered.

The brief submitted with the March 2012 motion indicated that Mr. November 2011 letter "is consistent with the statement Mr. provided in support of the initial I-360 appeal." Mr. did not provide any statement in support of the initial appeal, filed in May 2009. He first disputed the site visit report in a letter dated May 19, 2011, submitted in response to a May 5, 2011 notice of intent to revoke.

We already addressed, in our February 2012 decision, the conflicting claims regarding the 2007 site visit. With respect to Mr. November 28, 2011 claim that he intended to increase the beneficiary's salary, we stated:

> Mr. asserted that the petitioner intended "to increase [the beneficiary's] salary above the $1,000 per month" in the original job offer. Mr. made a similar claim on September 22, 2003, stating: "We expect to raise his annual salary over the next year and provide him with assistance for his housing." The record shows that the petitioner did not, in fact, raise the beneficiary's salary in 2004, 2005 or 2006, and the record is devoid of evidence that the petitioner ever provided "assistance for [the beneficiary's] housing" over and above his monthly salary. Mr. did not explain why his latest claim of a forthcoming salary increase is any more credible than his previous claim that the petitioner would receive a raise in 2004. . . .
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> This explanation conflicts with what the inspecting officer reported. It is, therefore, important to determine whether Mr. claims from late 2011 are credible. The inspecting officer's notes read, in pertinent part:
>
>> [*sic*] stated that [the beneficiary's] position was new – Assistant Imam. He was paid $1000 per month but left in December 2006 and is working in a mosque in Chicago. He didn't know which mosque. . . . stated that [the beneficiary] left because there wasn't enough membership to support having a second Imam. . . .
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> The officer's version of events did not emphasize the amount of the beneficiary's salary. Rather, the size of the congregation did not warrant the continued employment of the beneficiary as "Assistant Imam" in addition to [identified as the "current imam"].
>
> In his November 2011 letter, Mr. disputed the officer's report, stating that the beneficiary "informed us that he received an offer to work for for $2000 per month. At that time, there was not enough membership to

> support the higher salary." The inspecting officer reported, only months after the beneficiary's departure, that Mr. "didn't know which mosque" had become the beneficiary's new employer. This directly contradicts Mr. later claim, several years after the fact, that the beneficiary had informed the petitioner of the "offer to work for '
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> Furthermore, according to the petitioner's own figures, the petitioner had $378,211 in cash reserves at the end of 2006. . . . The most recent annual total, from 2009, was $378,910. . . . The petitioner did not explain how this minimal change in circumstances permits the petitioner to raise the beneficiary's salary now, but not in 2006. . . .
>
> In light of the above factors, the AAO finds the inspecting officer's contemporaneous report to be more credible than Mr. attempted revision from four and a half years later. According to that report, "there wasn't enough membership to support having a second Imam." This information indicates that the job offer ceased to exist in late 2006. Several officials of the petitioning mosque have recently asserted that the petitioner still intends to employ the beneficiary, but these assertions amount, in effect, to a new job offer rather than a continuation of the 2003 job offer that formed the original basis for the petition.

In finding credibility issues with the petitioner's version of events, we cited *Matter of Ho*, 19 I&N Dec. 582. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 591-92.

On motion, the petitioner asserts that the beneficiary need not have worked for the petitioner for the job offer to be valid. The petitioner cites case law such as *Matter of Rajah*, 25 I&N Dec. 127 (BIA 2009), and *Pei-Chi Tien v. INS*, 638 F.2d 1324 (5th Cir. 1981). However, the cited case law concerns adjustment of status, rather than the earlier petition stage of the immigration process. Furthermore, the cited cases concern the continued existence of the same job offer that formed the basis for the underlying immigrant visa petition, and the beneficiary's continued intent to accept that job offer.

Here, the issue is not whether the beneficiary worked for the petitioner, but that the beneficiary previously worked for the petitioner, and then left the employment. If the USCIS officer's version of events is correct, the job offer terminated when the petitioner decided it could no longer afford the beneficiary's services. The petitioner contends that we have no basis to believe the USCIS officer's assertions regarding the site visit. Nevertheless, we can reach the same conclusion from the petitioner's own version of events.

If the petitioner's version is correct, the beneficiary left for a better-paying position elsewhere, with his return contingent on, among other things, the petitioner's ability to raise his salary – an ability, in turn, that was contingent on a future increase in membership. The petitioner claims that it intends to provide this raise, but the petitioner made the same claim in 2003, saying: "we expect to raise his salary over the next year and provide him with assistance for his housing." The record demonstrates that the petitioner did not increase the petitioner's salary in 2004, and there is no evidence of payment of housing benefits. The petitioner has effectively asserted that the beneficiary rejected the terms of the original job offer and its salary of $12,000 per year, but will return when the petitioner is able to provide a higher level of compensation. The petitioner has not explained or demonstrated how two different periods of employment, with different terms of compensation, amount to the same job offer.

For the reasons explained above, we reaffirm the finding that the petitioner has effectively superseded the former job offer with a new job offer.

II. Ability to Pay

In our February 2012 decision, we cited the regulation at 8 C.F.R. § 204.5(g)(2), which reads, in part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. . . . In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service.

The current regulation at 8 C.F.R. § 204.5(m)(10) has other provisions concerning religious worker compensation, but that regulation applies only to petitions pending on November 26, 2008 or filed on or after that date. *See* 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008).

When the petitioner filed the petition in October 2003, stated that the beneficiary "is currently compensated with a monthly stipend of $1,000. We expect to raise his annual salary over the next year and provide him with assistance for his housing." The petitioner submitted copies of pay receipts and Internal Revenue Service (IRS) Form W-2, Wage and Tax Statements, to show that the petitioner had been paying the beneficiary $1,000 per month ($12,000 per year).

In our January 2011 remand order, we stated:

> If the petitioner intends to show that the job offer remains valid, then the petitioner must show that it has consistently been able to pay the beneficiary his intended compensation from the petition's 2003 filing date onward. In this context, it is

> significant that told a USCIS officer that the beneficiary's employment ended because the petitioner could not "support a second imam."

We also found that the petitioner's pre-2008 petition was subject to pre-2008 ability to pay requirements set forth at 8 C.F.R. § 204.5(g)(2).

In notices of intent to revoke dated May 5, 2011 and November 4, 2011, the director stated that the petitioner must submit evidence to satisfy the evidentiary requirements at 8 C.F.R. § 204.5(g)(2). The petitioner's response to the May 2011 notice included bank statements; the response to the November 2011 notice included copies of bank statements, unaudited financial reports, pay receipts and IRS Forms W-2. The latter documents showed that the petitioner had paid the beneficiary $1,000 per month through his departure at the end of 2006. The petitioner contended that the other financial documents (described in greater detail in earlier AAO decisions) showed that the petitioner remained able to pay that same salary in later years.

The financial reports from 2006 through 2008 show that the petitioner maintained four funds: "Operating," "Bait-Ul-Mal," "Reserve" and "Building." The petitioner paid its payroll out of its operating funds in 2006 and 2007. In 2006, the beneficiary's last year with the petitioner, the operating fund had $891 at the end of the year after payroll expenses. The end-of-year operating fund balance for 2007, when the petitioner no longer employed the beneficiary, was $11,091. This amount would not have been sufficient to cover the beneficiary's $12,000 annual salary. In 2008, the petitioner drew its payroll from the larger reserve fund, and continued adding to its operating fund while making no withdrawals from it except for bank fees.

The regulation at 8 C.F.R. § 103.2(b)(2)(i) states:

> The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

In our February 2012 decision, we observed that the petitioner had not submitted the primary evidence required by 8 C.F.R. § 204.5(g)(2), and "failed to account for the absence of this documentation, instead submitting bank statements without comment." We concluded:

> Because the petitioner submitted only bank statements and summary balance sheets, rather than the comprehensive financial documentation required by the USCIS regulation at 8 C.F.R. § 204.5(g)(2), the petitioner has provided an incomplete financial picture that offers no explanation as to why a six-figure surplus was supposedly not sufficient to cover a salary raise to match offer.

While the submitted evidence did not meet the requirements of 8 C.F.R. § 204.5(g)(2), the documents, on their face, indicated that the petitioner maintained bank balances of several hundred thousand dollars at a time when the petitioner claimed that it could not afford to increase the beneficiary's salary to $24,000 per year. In this way, the petitioner acknowledged that a large portion of its assets was committed to other expenses, and was thus unavailable for the beneficiary's salary despite appearing in the petitioner's bank balances. Having made such a claim, the petitioner cannot point to those same bank balances as evidence of its ability to pay the beneficiary.

The petitioner asserted, on motion, that the submitted documents show that the petitioner has consistently been able to pay the beneficiary's base salary of $1,000 per month since the 2003 filing date. The petitioner's own documents, however, show that, under the funding structure in place at the time, the petitioner's operating fund contained less than the required sum of $12,000 for 2007.

On motion, the petitioner stated:

> The AAO improperly interprets the regulations at 8 C.F.R. § 204.5(g)(2) to read that evidence of a petitioner's ability to pay the proffered wage *must* be in the form of annual reports, federal tax returns, or audited financial statements. . . . However, the regulations clearly state that . . . additional forms of evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted if it is deemed an "appropriate" case.

(Emphasis in original.) 8 C.F.R. § 204.5(g)(2) states that evidence of ability to pay "shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements." The regulation states that other types of documentation "may be submitted" as "additional evidence." The term "shall" signifies a requirement, whereas "may" allows for discretion. Furthermore, the reference to "additional evidence" means that the other documents may be submitted in addition to, rather than in place of, the other types of evidence that the petitioner "shall" submit.

The petitioner's March 2012 motion provides an illustration for why the cited regulation requires certain reliable, verifiable types of documentation. The petitioner, on motion, submitted new profit and loss statements for calendar years 2007 and 2009 through 2011. (An accompanying cover letter refers to a statement for 2008, but that statement is not in the record.) However, the new statements, like those submitted previously, are not audited. The profit and loss statements for 2009 and 2010 contain the same information as the statements submitted earlier, but the newly prepared profit and loss statement

for 2007 does not match the previously submitted financial report for the same year. Some of the differences appear below (in some cases, rounded to the nearest dollar):

	Financial Report	Profit and Loss
Total contributions	$385,349	$406,453
Building Fund Contributions	$165,574	$239,925
Burial Expense	$3,300	$2,300
Maintenance	$36,804	$23,200
Payroll	$51,476	$77,292
Total Expenses	$308,099	$350,878

The discrepancies, including the examples shown above, cast doubt on the accuracy and reliability of the statements. In the face of these discrepancies, we are under no obligation to presume that these doubts are limited to the 2007 financial reports. *See Matter of Ho*, 19 I&N Dec. 591.

The petitioner's submission of irreconcilably mismatched 2007 financial documents undermines the contention that the petitioner is able to reliably demonstrate its financial status despite the lack of the types of documents required by 8 C.F.R. § 204.5(g)(2). This is consistent with our prior finding that the petitioner has not met the applicable regulatory requirements regarding its ability to compensate the beneficiary.

Because the petitioner's latest filing does not meet all of the requirements of a motion to reopen or to reconsider, we must dismiss the motion under the regulation at 8 C.F.R. § 103.5(a)(4). In the alternative, we affirm our decision of February 1, 2012, and find that the petitioner has not met its burden to establish eligibility for the immigration benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

ORDER: The motion is denied. The revocation of the approval remains in effect.