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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



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: **AUG 07 2015**

[Redacted]

IN RE: Petitioner:
Beneficiary:

[Redacted]

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 is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 is granted, the motion to reconsider is 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 an assistant pastor. The director determined that the petitioner did not submit required evidence to establish that it qualifies as a bona fide nonprofit religious organization or a bona fide organization which is affiliated with the denomination, did not establish that the beneficiary would be employed in a qualifying, full-time position, did not establish that the beneficiary had the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition, and did not submit verifiable evidence of the beneficiary's compensation during the qualifying period.

We specifically and thoroughly discussed the petitioner's evidence in our decision dismissing the petitioner's original appeal and agreed with the director's determination. We also determined that the petitioner did not establish how it would compensate the beneficiary as required by 8 C.F.R. § 204.5(m)(10).

MOTION TO REOPEN

"A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." 8 C.F.R. § 103.5(a)(2). In support of the motion to reopen the petitioner submits an October 2, 2014, statement from the beneficiary summarizing his past work history. The petitioner also submitted an October 1, 2014, letter from its senior pastor stating that the petitioner is a 501(c)(3) tax exempt religious organization, summarizing the beneficiary's work hour history with its organization, and stating that the beneficiary has been serving as its assistant pastor "for two years." The petitioner further states in this letter that it will meet monetary compensation requirements for the beneficiary when the beneficiary is authorized to work, and that the beneficiary's nonmonetary compensation/housing is being supplied by a friend of the beneficiary. The petitioner resubmitted various documents pertaining to the beneficiary's past work history, experience and qualifications, and a copy of its tax determination letter from the Internal Revenue Service (IRS) establishing its 501(c)(3) tax exempt status as a religious organization.

The newly submitted evidence affirms our previous finding that the petitioner did not establish that the beneficiary would be employed in a qualifying full-time position. In a March 4, 2013, letter accompanying the petition, the petitioner congratulated the beneficiary on his appointment as assistant pastor, described the responsibilities of the position, and stated that the beneficiary "will work 22 hours every week." On appeal of the director's March 28, 2014, decision denying the petition, the petitioner stated that even while the beneficiary was attending school, he had been working 35 hours per week since November 1, 2012. The petitioner's assertion on appeal, that the beneficiary would work more than 35 hours per week after his graduation from school in June of

2014, does not alter the fact that the petitioner initially stated that the duties of the proffered position would only require 22 hours per week. On motion, the petitioner asserts that the “misunderstanding” of whether the beneficiary would work in a full-time position was “predicated on the fact he was also in theological school.” The petitioner further asserts that now that the beneficiary has completed his schooling, he is working at least 35 hours per week.

The March 4, 2013, letter does not indicate that the duties of the position were limited because of the beneficiary’s schooling. The petitioner did not assert that the beneficiary would work at least 35 until the appeal. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The petitioner has not submitted sufficient documentation to establish that the position meets the full-time position requirements of 8 C.F.R. § 204.5(m)(2) at the time the petition was filed. The evidence submitted on motion does not resolve the noted inconsistencies in the stated hours of work required for the position. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner submitted no new evidence to establish that the beneficiary had the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition as required by 8 C.F.R. § 204.5(m)(4), verifiable evidence of the beneficiary’s compensation during the qualifying period as required by 8 C.F.R. § 204.5(m)(11), or how the petitioner would compensate the beneficiary as required by 8 C.F.R. § 204.5(m)(10). The evidence submitted by the petitioner in support of the motion to reopen, consisting of the October 1, 2014, letter from the petitioner’s senior pastor, the beneficiary’s October 2, 2014, written statement, and letters from the beneficiary’s current and previous employers, lack detailed information about the beneficiary’s dates of employment. The petitioner submitted no additional evidence in support of its motion to reopen concerning the beneficiary’s compensation during the qualifying period or how it would compensate the beneficiary under the terms of the petition.

The petitioner resubmitted a February 12, 2014, letter from the IRS which indicates that the petitioner was granted tax exempt status under section 501(c)(3) of the Internal Revenue Code (IRC) as a church effective [REDACTED]. The letter sufficiently establishes that the petitioner was exempt from taxation under section 501(c)(3) of the IRC as of the petition’s filing date. We withdraw that portion of our September 19, 2014, decision to the contrary.

MOTION TO RECONSIDER

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 United States Citizenship and Immigration Services (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).

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 petitioner has stated no reasons for reconsideration which are supported by pertinent precedent decisions that establish that our September 19, 2014, decision was based on an incorrect application of law or USCIS policy. The motion to reconsider must, therefore, be dismissed.

The regulation at 8 C.F.R. §§ 103.5(a)(1)(iii) lists the filing requirements for motions to reopen and motions to reconsider. Section 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." In this matter, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion did not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C), it must also be dismissed for this reason.

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 petitioner's motion to reopen is granted, the motion to reconsider is dismissed, our prior decision dismissing the appeal is affirmed, and the petition remains denied.