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

(b)(6)

DATE: MAY 1 5 2015

FILE #:
PETITION RECEIPT #:

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:

NO REPRESENTATIVE OF RECORD

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center ("director"), denied the employment-based immigrant visa petition. On appeal, we withdrew the director's decision and remanded the petition for further consideration based on revised regulations. The director again denied the petition. We subsequently affirmed the director's denial of the petition and dismissed three motions. The matter is now before us on a motion to reopen and reconsider. The motion to reconsider will be dismissed, the motion to reopen will be granted, but the petition remains denied.

The petitioner is a church of the Southern Baptist denomination that 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. As described in our previous decisions, which we incorporate here, the petitioner did not establish that the proffered position meets the regulatory definition of a religious occupation pursuant to 8 C.F.R. § 204.5(m)(5). The petitioner now files its fourth motion and submits additional evidence in support of its motion.

RELEVANT LAW AND REGULATIONS

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. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* 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).

Section 203(b)(4) of the Act, 8 U.S.C. § 1153(b)(4), 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;
>
> (ii) seeks to enter the United States--
>
> > (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
> >
> > (II) before September 30, 2015, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
> >
> > (III) before September 30, 2015, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of [the

Internal Revenue Code]) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(5) provides the following definition:

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.

PERTINENT FACTS AND PROCEDURAL HISTORY

The petitioner filed the Petition for Special Immigrant (Form I-360) seeking to classify the beneficiary as an immigrant religious worker on July 26, 2006. On November 6, 2007, the director denied the petition, concluding that the petitioner did not establish that the beneficiary was employed as a religious worker in the same capacity as the proffered position for at least the two-year period immediately preceding the filing of the petition. The director also found that the petitioner did not extend a qualifying job offer to the beneficiary. We withdrew the director's decision on appeal and remanded the matter to the director for a new decision in accordance with revised regulations that were published in November of 2008.

On remand, the director denied the petition on March 11, 2010, finding that the proffered position was not a religious occupation as defined in 8 C.F.R. § 204.5(m)(5) and the beneficiary did not meet the two-year qualifying religious work experience. The director certified its decision to us for review. On January 30, 2013, we withdrew the director's finding that the petitioner did not establish that the beneficiary met the two-year qualifying work experience requirement, but affirmed the director's conclusion that the petitioner did not establish that the proffered position met the regulatory requirements of a religious occupation. Specifically, we found that the petitioner had not established

that the proffered position is recognized as a religious occupation within the denomination pursuant to 8 C.F.R. § 204.5(m)(5). We evaluated all of the evidence in the record, including a new letter from Pastor that was submitted in response to the certified denial, and concluded that the petitioner had not submitted any evidence for its proposition that the proposed position is traditionally recognized by the Southern Baptist denomination.

The petitioner subsequently filed a motion to reconsider. On October 8, 2013, we dismissed the motion because it did not show that our previous decision was based on an incorrect application of law or USCIS policy, or was incorrect based on the evidence in the record at the time of our decision. Nonetheless, we again evaluated all of the evidence in the record. We discussed a new letter from Pastor submitted with the motion which asserted that evidence had been submitted on December 11, 2006, to prove that the Southern Baptist denomination recognizes the proffered position as a religious occupation. We noted that the record did not include documentary evidence from December 2006 in support of the petitioner's proposition that the denomination recognizes the proposed position as a religious occupation.

The petitioner filed a second motion to reconsider. In our decision dated March 20, 2014, we dismissed the motion because it did not address our previous decision and did not state a reason for reconsideration. We evaluated a new letter from Pastor submitted with the motion. We found that the letter repeated prior assertions and did not specify any evidence it purportedly submitted to show that the Southern Baptist denomination recognizes the proffered position as a religious occupation.

The petitioner filed a motion to reopen and reconsider. On August 1, 2014, we dismissed the motion to reopen and reconsider, finding that the petitioner made no legal arguments and made no attempt to show prior USCIS error, but rather, that the petitioner appeared to make a new claim of eligibility based on new evidence. We evaluated the new evidence and concluded that the petitioner did not resolve the concerns articulated in our prior decisions.

The petitioner now files the instant motion to reopen and reconsider of our August 1, 2014 decision. The petitioner submits several letters in support of its motion.

ANALYSIS

We conduct appellate review on a *de novo* basis. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989). As explained below, we deny the motion to reconsider, but grant the motion to reopen. Upon a full review of the record, we find that the petitioner has not overcome the ground for denial. The petition remains denied.

The petitioner submits a new letter from Pastor a letter from a bank, and numerous letters of recommendation for the beneficiary. The petitioner also resubmits several documents that were already in the record.

The petitioner's submission does not meet the requirements of a motion to reconsider. The petitioner does not cite any statutes, regulations, precedent decisions, or other pertinent sources or authority to establish that our decision was based on an incorrect application of law or USCIS policy pursuant to 8 C.F.R. § 103.5(a)(3). Therefore, the petitioner's motion to reconsider is denied.

The petitioner's submission does, however, meet the requirements of a motion to reopen at 8 C.F.R. § 103.5(a)(2). Although the evidence submitted with the motion does not explicitly challenge our last decision dated August 1, 2014, the letter from Pastor does provide a description of the church that appears to address the definition of religious occupation. Accordingly, the motion to reopen is granted.

Nonetheless, the petition must remain denied. As the director acknowledged, the proposed position undoubtedly includes religious elements and we recognize the beneficiary's service to her church. However, the definition of religious occupation in 8 C.F.R. § 204.5(m)(5) requires that the proposed job be recognized as a religious occupation within the denomination. The most recent letter from Pastor submitted with the instant motion states that "[t]he role of the church 'staff,' or a religious instructor in a Korean church differs from the ones in a typical American church[] in job expectations by the church . . . [and] covers wider range of works which might seem administrative or secretarial in nature." He further states that the beneficiary's position "is almost tantamount" to that of an assistant pastor.

Aside from Pastor contentions, there remains no documentary evidence to support the proposition that the proposed position is recognized as a religious occupation within the denomination. Rather than providing evidence that the Southern Baptist denomination employs religious instructors, Pastor latest letter indicates that the beneficiary works in the Children's Ministry, Youth Ministry, Parental Education, and Outreach Ministry, as well as performs administrative tasks. As we previously noted, the beneficiary's job titles, job duties, and schedule have changed such that it appears that job duties have been added to the beneficiary's position in order to justify a full-time work schedule rather than establishing a recognized occupation in the church. The record does not show that the proffered position previously existed within the church, and there is no evidence that any other church within the denomination employs religious instructors. The letter from a bank and the numerous letters of recommendation for the beneficiary submitted with the motion do not address this deficiency in the record. Therefore, the petitioner has not established that the proffered position is a religious occupation as defined in 8 C.F.R. § 204.5(m)(5).

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 reconsider is dismissed, the motion to reopen is granted, and the petition remains denied.