



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF M-V-M-

DATE: SEPT. 21, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner seeks employment as a religious instructor at a church. This special immigrant religious worker classification allows foreign nationals to self-petition for employment at non-profit religious organizations, or their affiliates, in the United States as ministers, in religious vocations, or in other religious occupations. *See* Immigration and Nationality Act (the Act) section 203(b)(4), 8 U.S.C. § 1153(b)(4).

The Director of the California Service Center denied the petition, concluding that the Petitioner did not establish that: 1) the proffered position qualifies as a religious occupation; 2) that he had the required two years of qualifying religious work experience immediately preceding the date the petition was filed; and 3) that his prospective employer is a bona fide tax-exempt, religious organization. The Petitioner filed several appeals and motions before us and before the Director. Most recently, we summarily dismissed the Petitioner's appeal of the Director's decision finding that the matter was improperly filed on a Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals from a Decision of a DHS Officer. We then denied the Petitioner's subsequent motions to reopen and reconsider, determining that they did not meet the requirements of a motion to reopen or reconsider. We alternatively found that even if the Petitioner's submission had met the requirements of a motion to reopen or reconsider, which it did not, we would nonetheless have denied the motions because the proffered position did not qualify as a religious occupation.

The matter is now before us on another motion to reopen and to reconsider. The Petitioner argues that the proffered position is a religious occupation and submits new evidence in support of that contention.

We will deny the motions to reopen and reconsider.

I. LAW

A motion to reopen must state the new facts to be provided and to be supported by affidavits or other documentation. 8 C.F.R. § 103.5(a)(2). However, any new facts must relate to eligibility at the time the Petitioner filed the petition. *See* 8 C.F.R. § 103.2(b)(1), (12); *see also* *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A motion to reconsider must offer 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 is based on the existing record and the Petitioner may not introduce new facts or new evidence relative to his or her arguments. 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 materials. *Compare* 8 C.F.R. § 103.5(a)(3) *and* 8 C.F.R. § 103.5(a)(2).

II. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

Our last decision, dated March 4, 2016, described the procedural history of this case. Briefly, the Director initially denied the petition in December of 2004, but reissued the decision in August of 2010. The Petitioner subsequently filed two motions which were both denied as untimely filed. He then filed a Form EOIR-29, which the Director dismissed as untimely and improperly filed because it was filed on Form EOIR-29 instead of Form I-290B. We summarily dismissed the appeal, finding that the Petitioner did not address his untimely and improperly filed appeal on Form EOIR-29. Next, we denied the Petitioner's motion to reopen and reconsider. We found that the Petitioner did not specify how we misapplied the law or agency policy. We noted that the Petitioner did not offer any new facts to be proven in the reopened proceedings and did not submit any documentary evidence for our review. Therefore, we denied the motions as they did not meet the regulatory requirements for motions to reopen or reconsider.

In addition to denying the motions for failing to meet the regulatory requirements, we provided an alternative holding in our decision. We found that even if the Petitioner's submission had met the requirements of a motion to reopen or reconsider, the petition would remain denied. We quoted the prospective employer's letter that was submitted with the initial filing and discussed its response to the Director's notice of intent to deny the petition (NOID), both of which maintained that the Petitioner would be teaching auto mechanics and repairing the church's vehicles and equipment. We concluded that even if we reopened or reconsidered the matter, the evidence did not establish that the proffered position was a religious occupation, as defined in the regulations.

The Petitioner now files another motion to reopen and reconsider. He argues that all educational work within the church primarily relates to a traditional religious function and is recognized by the church as a religious occupation. He submits additional evidence with the motions.

III. ANALYSIS

The only decision before us is our last decision denying the Petitioner's motions to reopen and reconsider for not meeting the regulatory requirements for a motion to reopen or reconsider. In the instant motions before us, the Petitioner does not address our reason for denying his previous motions. The Petitioner does not argue that our prior decision was based on an incorrect application of law or USCIS policy, and he does not state any new facts or provide documentation addressing the reason for our previous denial. Rather, the Petitioner only addresses our alternative holding,

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which we emphasized in our decision was applicable only if we had reopened the matter, which we did not. Accordingly, the current motion to reopen and reconsider before us is denied.¹

IV. CONCLUSION

The Petitioner's submission does not meet the regulatory requirements of a motion to reopen or to reconsider.

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. Accordingly, the motions to reopen and reconsider are denied.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of M-V-M-*, ID# 9762 (AAO Sept. 21, 2016)

¹ The Director denied the petition on three bases. The current motion only addresses our alternative holding for one of the three reasons the petition was denied.