

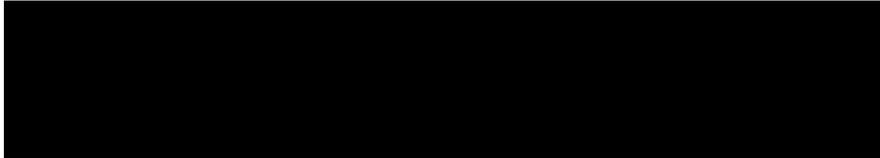
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Date: **MAY 11 2012**

Office: CALIFORNIA SERVICE CENTER

FILE: 

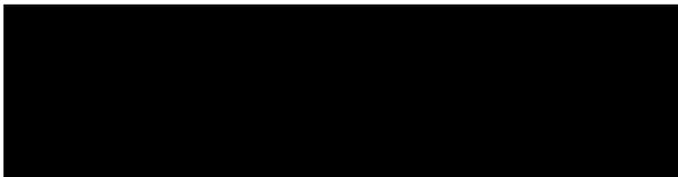
IN RE:

Petitioner:
Beneficiary:



PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and a motion to reconsider. The motions will be dismissed.

The petitioner is a church. It seeks to extend the beneficiary's status as a special immigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as an associate music minister. The director determined that beneficiary has reached the statutory maximum period for which he can qualify as an R-1 nonimmigrant religious worker. The director also determined that the petitioner and beneficiary had entered into a conspiracy to obtain R-1 status for the beneficiary. On appeal, the petitioner did not address the director's determination that the beneficiary had reached the statutory maximum for which he can qualify for R-1 status; the AAO found that the petitioner had waived this issue. The petitioner also does not address this issue on motion. The AAO affirmed the director's findings that the petitioner had engaged in a conspiracy with the beneficiary to obtain R-1 status.

Counsel asserts on motion that the "allegation of conspiracy between the signatory of petition and the beneficiary . . . is baseless and incorrect" and that the "service failed to evaluate and discuss the documentary evidences submitted by Petitioner during the Motion to Reopen and Reconsideration." The petitioner submits additional documentation in support of the motion.

Counsel's argument that the petitioner's evidence submitted during its first motion was not evaluated or discussed is without merit. The AAO's decision clearly references the petitioner's response to the motion. The documentation submitted in support of the current motion, including the August 22, 2011 board resolution, appears to be drafted only in response to the deficiencies in the evidence identified by the AAO in its August 19, 2011 decision. The petitioner provided no contemporaneous documentation of its agreement with the beneficiary. Additionally, as discussed in the AAO's previous decision, the fact that the petitioner falsely indicated in its petition that it had the financial ability to compensate the beneficiary lends credence to the beneficiary's initial claim that he agreed to work for the petitioner without pay in exchange for the petitioner filing the Form I-129, Petition for a Nonimmigrant Worker.

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). Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.¹

A review of the evidence that the petitioner submits on motion reveals no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2). The only documentation submitted on motion consists of statements produced after the AAO identified deficiencies in the petitioner's evidence.

¹ The word "new" is defined as "1. Having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence> . . ." WEBSTER'S NEW COLLEGE DICTIONARY, (3d Ed 2008). (emphasis in original).

The petitioner's motion, however, is not an opportunity for the petitioner to correct its own defects in the record.

Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the petitioner has not met that burden. The motion to reopen will be dismissed.

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 (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 cannot be used to raise a legal argument that could have been raised earlier in the proceedings. Rather, the "additional legal arguments" that may be raised in a motion to reconsider should flow from new law or a *de novo* legal determination reached in its decision that may not have been addressed by the party. A motion to reconsider is not a process by which a party may submit, for example, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior decision. 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. *See Matter of Medrano*, 20 I&N Dec. 216, 219 (BIA 1990, 1991).

In this case, the petitioner failed to support its motion with any legal argument or precedent decisions to establish that the AAO decision was based on an incorrect application of law or USCIS policy. The motion to reconsider will be dismissed.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The motions to reopen and reconsider are dismissed, the decision of the AAO dated August 19, 2011 is affirmed, and the petition remains denied.