

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]

813

Date: **NOV 15 2012** Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:
[REDACTED]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you.

M Beadnick
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 reconsider. The motion will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a nonimmigrant religious worker under section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1), to perform services as a ministry assistant to the youth leaders coach. The AAO affirmed the director's decision that the petitioner had not established that the position qualifies as that of a religious vocation or occupation and how it intends to compensate the beneficiary.

On motion, counsel asserts that in the view of the [REDACTED] ordination denotes a lifetime commitment and is therefore a religious vocation. Counsel also asserts that the evidence submitted by the petitioner sufficiently establishes how it intends to compensate the beneficiary. Counsel submits a brief in support of the motion.

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 her brief, counsel outlines what she describes is the [REDACTED] [REDACTED] View of Ordination." There is nothing in the record, however, to support counsel's statements. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Counsel does not cite to any precedent decision or law that indicates the AAO's previous decision was based on an incorrect application of law or USCIS policy.

Counsel also asserts that the single bank statement and the Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, for another individual in a similar position are evidence of how

the petitioner intends to compensate the beneficiary. As the AAO stated in its previous decision, the IRS Form W-2 showed the petitioner paid the other individual \$900 in 2010. Counsel does not explain how this payment is evidence of the petitioner's ability to pay the beneficiary more than \$900 for any year. The petitioner indicated that it had a net income for the year of \$1,000. The AAO found that the single bank statement for March 2011, with no other supporting documentation, is insufficient to establish the petitioner's ability to compensate the beneficiary in the amount of \$20,000 per year. Again, counsel has not provided any precedent decision or law to indicate that the AAO's previous decision was based on an incorrect application of law or USCIS policy.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. As no new evidence has been presented to overcome the grounds for the previous dismissal, and no reasons set forth indicating that the decision was based on an incorrect application of law, the previous decisions of the AAO and the director will be affirmed. The petition is denied.

ORDER: The AAO's decision of February 23, 2012 is affirmed. The petition is denied.