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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: **MAR 26 2013** 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 (the 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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

The petitioner is a church. It seeks to extend the beneficiary's status as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as a minister. Based on the results of an onsite investigation of the petitioner's premises, the director determined that the petitioner had not established that it is a bona fide nonprofit religious organization and operating in the capacity claimed in the petition.

On appeal, counsel for the petitioner stated that the director "failed to fully analyze the evidence and supporting documentation provided." In a letter dated December 1, 2011, counsel denied having received a complete copy of the director's decision and requested additional time after receipt of the complete decision in which to submit an appellate brief. By fax of February 10, 2012, the AAO provided counsel with a complete copy of the director's decision and granted her an extension to March 12, 2012 in which to submit her brief. The AAO received no further documentation. On August 9, 2012, summarily dismissed the petition.

On motion, counsel asserts there were no documents attached to the AAO's February 10, 2012 fax and that despite "multiple requests to CIS requesting a complete copy of the original 10/5/11 denial" she "did not receive any further communication, until receipt of the 8/9/12 denial letter . . . ." Counsel further asserts that "Petitioner has successfully obtained a copy of the complete denial letter from CIS, but it was just received one day ago and thus Petitioner has not had sufficient time to properly review it." Counsel again requests additional time in which to "submit a brief and/or additional evidence explaining the reasons why the denial should be reopened, reconsidered, and overturned." Counsel also again asserts, without pointing to specifics, that the director "failed to give proper weight and consideration to the evidence in question" and "failed to properly apply the statutes, regulations and precedent decisions."

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.<sup>1</sup> The petitioner has provided no new evidence to support of its motion to reopen. Counsel submitted nothing to document her efforts to obtain a copy of the director's decision. Counsel acknowledges receiving the AAO's February 10, 2012 fax stating that a copy of the director's denial was attached but counsel stated there were no documents with the fax. There is no evidence that counsel followed up on the alleged missing documentation. Additionally, despite the fact that she was given an additional month in which to submit additional documentation to support the appeal, the AAO received no other documentation before issuing its decision six months after forwarding the denial to counsel.

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<sup>1</sup> 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).

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 9, 2012 is affirmed, and the petition remains denied.