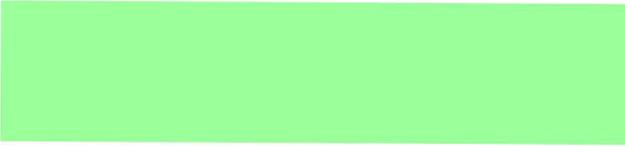


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U.S. Citizenship
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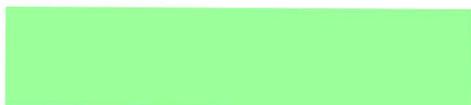


Date: **MAR 27 2013** Office: CALIFORNIA SERVICE CENTER FILE:

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 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, initially approved the employment-based nonimmigrant visa petition. On further review, the director determined that the beneficiary was not eligible for the visa classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke (NOIR) approval of the petition and her reasons for doing so, and subsequently exercised her discretion to revoke approval of the petition on March 8, 2012. 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 seeks to extend the beneficiary's status as a nonimmigrant religious worker under section 101(a)(15)(R)(1) of the Act, 8 U.S.C. § 1101(a)(15)(R)(1), to perform services as a Judaic studies assistant teacher. The AAO affirmed the director's decision that the beneficiary had violated the terms of her R-1 nonimmigrant religious worker status by engaging in self-employment.

On motion, counsel repeats verbatim the argument he put forth on appeal:

The regulation cited, 8 CFR 14.2(r)(13) [sic] does not render an R-1 visa holder out of status for receiving income from sources outside of the petitioning religious employer. Instead the visa holder is out of status if they are compensated for work by any other "religious organization" other than the petitioning one. Here the income received was not from any other "religious organization["]], as the NOIR and decision admit, it was from [REDACTED] a company which does not employ her and thus does not compensate her for her work.

It is ludicrous to assert that a person because of their status as an R visa holder (or any other visa) cannot receive money from sources for which they do not have an employer-employee relationship. Here, the income was not compensation for work, it was income based upon equity ownership, rentals, or trust."

Finally, we see nothing in the record which determines that the income was actually received by [the beneficiary]. As the decision notes the "beneficiary (or her husband received the income."

The petitioner submits no additional documentation in support of the motion, and counsel does not address any of the findings in the AAO's November 5, 2012 decision. Although counsel stated on the Form I-290B, Notice of Appeal or Motion, that he was attaching a brief, no brief was included with the motion and no brief is listed on counsel's list of attachments.

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. Accordingly, 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 motion to reconsider is dismissed, the decision of the AAO dated November 5, 2012 is affirmed, and the petition remains denied.