



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **OCT 08 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) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The petitioner filed an appeal, and later a motion to reopen and reconsider. The AAO dismissed both of those filings. The matter is now before the AAO on a second motion to reopen and reconsider. The AAO will dismiss the motion.

The petitioner is a parish of the Catholic church. It filed the Form I-129 petition on May 11, 2011, seeking to classify the beneficiary as a nonimmigrant religious worker under section 101(a)(15)(R) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R), to perform services as a lay ecclesial minister. The director denied the petition on December 28, 2011, having determined that the petitioner had not established how it intends to compensate the beneficiary and that the beneficiary “is qualified to be employed in a religious occupation.” The AAO dismissed the petitioner’s appeal on August 23, 2012, concurring with both stated grounds for denial. The petitioner filed a motion to reopen and reconsider, which the AAO dismissed on February 5, 2013.

The petitioner has now filed a second motion to reopen and reconsider. On motion, the petitioner submits a statement from Rev. Fr. [REDACTED] pastor of the petitioning church, and various supporting exhibits. The petitioner states: “We wish to refile this application for a [*sic*] R1 visa and have included the I-129 for refiling of the application.” If the petitioner wishes to file a new petition, it must file that petition in its own right, with the proper filing fee. Submission of a new petition form on motion does not amount to refiling the petition. Furthermore, as the AAO had previously observed that some of the petitioner’s evidence post-dates the petition’s filing date, moving that filing date to March 2013 (when the petitioner filed the motion) would not remedy that issue.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). 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 Services (USCIS) policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Section 101(a)(15)(R) of the Act pertains to an alien who:

- (i) for the 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States; and
- (ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii).

Section 101(a)(27)(C)(ii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii), pertains to a nonimmigrant who seeks to enter the United States:

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) . . . in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) . . . in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation.

The USCIS regulation at 8 C.F.R. § 214.2(r)(1) states that, to be approved for temporary admission to the United States, or extension and maintenance of status, for the purpose of conducting the activities of a religious worker for a period not to exceed five years, an alien must:

(i) Be a member of a religious denomination having a bona fide non-profit religious organization in the United States for at least two years immediately preceding the time of application for admission;

(ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week);

(iii) Be coming solely as a minister or to perform a religious vocation or occupation as defined in paragraph (r)(3) of this section (in either a professional or nonprofessional capacity);

(iv) Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and

(v) Not work in the United States in any other capacity, except as provided in paragraph (r)(2) of this section.

The denial of the petition rests on two grounds, to be discussed below. The petitioner has not overcome either of those grounds or satisfied the requirements of a motion to reopen or reconsider.

Intended Compensation

In several places on Form I-129 and the accompanying employer attestation, the petitioner indicated that the beneficiary would receive no compensation. On line 7 of the employer attestation, for instance, the petitioner stated: "The beneficiary is self-supporting and will not be compensated by the church." The USCIS regulation at 8 C.F.R. § 214.2(r)(11)(ii) limits the circumstances under

which a self-supporting religious worker qualifies for R-1 nonimmigrant status, and imposes specific evidentiary requirements relating to that self-support:

(A) If the alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination.

(B) An established program for temporary, uncompensated work is defined to be a missionary program in which:

- (1) Foreign workers, whether compensated or uncompensated, have previously participated in R-1 status;
- (2) Missionary workers are traditionally uncompensated;
- (3) The organization provides formal training for missionaries; and
- (4) Participation in such missionary work is an established element of religious development in that denomination.

(C) The petitioner must submit evidence demonstrating:

- (1) That the organization has an established program for temporary, uncompensated missionary work;
- (2) That the denomination maintains missionary programs both in the United States and abroad;
- (3) The religious worker's acceptance into the missionary program;
- (4) The religious duties and responsibilities associated with the traditionally uncompensated missionary work; and
- (5) Copies of the alien's bank records, budgets documenting the sources of self-support (including personal or family savings, room and board with host families in the United States, donations from the denomination's churches), or other verifiable evidence acceptable to USCIS.

In this instance, the petitioner submitted Form I-134, Affidavit of Support, from [REDACTED] who stated that he would provide the beneficiary with room and board while she was in the United States "performing religious duties." The director denied the petition in part because the petitioner had not

submitted any of the evidence required by the regulation at 8 C.F.R. § 214.2(r)(11)(ii) or shown that the proffered position was part of an established program for temporary, uncompensated work.

On appeal, the petitioner claimed that “the United States Conference of Catholic Bishops . . . has an established missionary program for laity (lay ecclesial minister/extra-ordinary ministers of the Eucharist) as uncompensated missionary work in accordance with Vatican Council II both locally and internationally.” The AAO, in dismissing the appeal on August 23, 2012, stated that the petitioner “submitted no documentation in accordance with the regulation to confirm the existence of an established missionary program. The petitioner submits none of the required documentation on appeal; accordingly, it has failed to establish how the beneficiary will be compensated.”

On motion from the AAO’s August 2012 dismissal, the petitioner submitted letters from the beneficiary’s sister and mother, who both reside in the United Kingdom, pledging to support the beneficiary. The petitioner also submitted bank documentation showing that the beneficiary’s “domiciliary account” held \$1,109.20 as of June 29, 2011 and \$109.55 as of September 18, 2012. A “card account” held \$307.33 as of September 18, 2012.

In dismissing the petitioner’s first motion, the AAO stated:

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

The dismissal notice also indicated that evidence newly created after the petition’s filing date did not establish eligibility as of the petition’s filing date.

In the second motion, the petitioner asserts: “We have submitted financial statements of the beneficiary,” and that “[t]he beneficiary will be self supporting as has always been the case,” but the petitioner does not explain how it has met all of the evidentiary requirements set forth in the USCIS regulation at 8 C.F.R. § 214.2(r)(11)(ii). The petitioner has described some of the uncompensated roles that the beneficiary fulfills for the petitioning church, but the record shows that several other individuals perform similar roles. On Form I-129, the petitioner indicated that the petitioning parish has only seven employees, but dozens of names appear alongside the beneficiary’s name on a “Liturgical Minister Schedule” submitted with the previous motion. The petitioner has not claimed or established that all of these individuals are participants in an established, international program of missionary work, rather than volunteer members of the local congregation. The record establishes only that the beneficiary belongs to the petitioning church and is active in the congregation, serving, for instance, in a rotation of liturgical ministers who assist the minister during worship services.

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). [Footnote appeared in the AAO’s February 2013 decision.]

Uncompensated volunteer work of this kind is not a basis for immigration benefits. *See* 72 FR 20442, 20446 (Apr. 25, 2007). The citation refers to the preamble of a proposed rule, but USCIS adopted the reasoning in the preamble of the proposed rule in support of the promulgation of the final rule. 73 Fed. Reg. 72276, 72277 (Nov. 26, 2008).

The petitioner's second motion includes two 2013 calendars and copies of letters from 2011 and 2012, but the newly submitted evidence establishes no new facts relevant to the beneficiary's intended compensation (or the lack thereof).

Religious Occupation

The second and final issue discussed in previous decisions concerns the claim that the beneficiary works in a religious occupation or vocation. The USCIS regulation at 8 C.F.R. § 214.2(r)(3) includes the following definitions:

Religious occupation means an occupation that meets all of the following requirements:

- (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination;
- (B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination;
- (C) The duties do not include positions which are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible; and
- (D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

Religious vocation means a formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia, to a religious way of life. The religious denomination must have a class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion. Examples of vocations include nuns, monks, and religious brothers and sisters.

The petitioner initially stated that the beneficiary's duties would include "web page maintenance, distribute Holy Communion to the faithful and participate at choir rehearsals and singing at masses." The petitioner did not indicate that the Catholic Church normally pays individuals to perform these

functions (thereby making them an “occupation”), or that the beneficiary has made a formal lifetime commitment to a religious way of life, comparable to the vocation of a Catholic nun or monk.

In response to an October 13, 2011 request for evidence, the petitioner submitted a brochure that serves as “[a] guide to Parish Information and Service Organizations.” In addition to “extra-ordinary ministers” who “assist the Priest in the distribution of the Lord’s Body and Blood” at “[a]pproximately 1 to 2 Masses per Month,” the guide lists numerous volunteer functions such as singing in the choir, a Decorating Committee to “[p]ut up and take down seasonal decorations,” and the “Ladies of Charity” which is open to “[a]ll women parish members 18 and older.” “All parish members high school age and older” qualify to serve as “extra-ordinary ministers.” Nothing in the guide indicated that any of these functions are religious occupations or religious vocations.

On appeal and on subsequent motions, the petitioner has emphasized that the petitioner performs traditional religious functions rather than administrative duties. Not every traditional religious function, however, correlates to an occupation. Although attending mass and receiving communion, for instance, amount to religious rather than administrative functions, this does not mean that attending mass and receiving communion are religious occupations.

In dismissing the petitioner’s appeal, the AAO stated:

The documentation submitted by the petitioner does not establish that the proffered position is recognized as an occupation within the normal meaning of that term or as a religious occupation within the Catholic denomination. The term occupation normally refers to an individual’s job or “[a]n activity serving as one’s regular employment.”² The duties as described for the position of ecclesial minister and music minister indicate that they are opportunities available to members of the church to participate in church activities by assisting the priest in administering the sacraments and by singing in the choir. . . . The petitioner does not claim that all of the members of the choir or the extra-ordinary ministry are employees. The petitioner submits no documentation to establish . . . how [the beneficiary’s] duties would make the beneficiary’s position constitute an occupation.

The petitioner did not address the above points in the first motion, instead providing a longer list of the beneficiary’s functions and newly created documentation regarding some of those functions. On September 19, 2012, the beneficiary received a four-year commission as an “Extraordinary Minister of Holy Communion.” The petitioner contended: “Extra-Ordinary Ministers of Holy Eucharist are considered to be engaged in a religious occupation as the duties of the Extra-Ordinary Minister relate to the Holy Communion, which is a traditional religious function within our denomination.” The traditional religious role of communion is not in dispute, but the record does not show that the petitioner’s religious denomination recognizes the role of the extraordinary minister as a religious

² WEBSTER’S II NEW COLLEGE DICTIONARY 757 (2001). [Footnote appeared in the original AAO decision.]

occupation, *i.e.*, as the work of a paid employee rather than an incidental function typically performed by volunteers from the congregation.

A September 19, 2012 letter from Rev. [REDACTED], director of the Secretariat of Parish Life for the Diocese of [REDACTED] stated: "This extraordinary ministry was created exclusively for those instances where there are not enough ordinary ministers to distribute Holy Communion." There is no evidence that extraordinary ministers receive compensation (or that the Catholic Church regards them as missionaries). Furthermore, the beneficiary did not receive this commission until a month after the AAO dismissed the petitioner's appeal.

A Liturgical Minister Schedule for July 15 through October 7, 2012³ included the beneficiary's name among dozens of others. The schedules typically showed 12 names under "EUCHMIN," four names each for three services. The beneficiary's name appears in many, but not all, of the weekly schedules. The week-to-week changes, and the sheer number of people involved, indicate that the parish assigns the various roles not to employees in religious occupations, but rather to a rotating roster of volunteers from the congregation.

The AAO dismissed the petitioner's first motion, observing that much of the petitioner's evidence on motion was newly created and therefore could not establish eligibility as of the petition's filing date. The AAO also stated that "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."

On the second motion, the petitioner asserts that much of the petitioner's evidence from the first motion was newly created because "it was not the norm to issue a paper certificate to lay ministers." The petitioner submits materials intended to establish that the beneficiary's work preceded the issuance of the certificates in September 2012. The timing on the certificates, however, is a peripheral issue rather than a basic ground for dismissal of the first motion. The petitioner has not established that the beneficiary's duties meet the regulatory definition of a religious occupation. The petitioner has established only that the beneficiary has assumed a number of volunteer functions within the church, and appears to have taken on more such responsibilities since the petition's filing date. The petitioner has not shown that individuals performing the same duties as the beneficiary, as of the filing date, typically received compensation from the Catholic Church. Volunteer functions do not amount to an occupation, regardless of how many such functions one takes on.

As the AAO stated in its February 2013 decision:

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*,

³ The schedule specified no year, but 2012 is the most recent year on which the dates identified as Sundays fell on that day of the week.

485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a “heavy burden.” *INS v. Abudu*, 485 U.S. at 110. . . .

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).

The petitioner’s latest motion includes no new evidence that establishes any material claim of fact, and 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 latest filing, therefore, does not meet the requirements of a motion to reopen or a motion to reconsider.

The AAO will dismiss the motion for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, 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, the petitioner has not met that burden.

ORDER: The motion is dismissed.