



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF I-G-O-P-D-C-, INC.

DATE: SEPT. 24, 2015

MOTION TO REOPEN AND RECONSIDER AAO DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a church, seeks to classify the Beneficiary as a nonimmigrant religious worker to perform the services of an associate pastor. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(R), 8 U.S.C. § 1101(a)(15)(R). The Director, California Service Center, denied the petition finding that the Petitioner did not successfully complete a compliance review site visit. We concurred with the Director's finding and further found that the Petitioner did not establish how it would compensate the Beneficiary. We dismissed the appeal on February 6, 2015. The matter is now before us on a motion to reopen and motion to reconsider. The motions will be denied.

I. MOTION TO REOPEN

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

In denying the petition, the Director determined that the record did not establish that the petitioning organization was functioning in the capacity claimed in the petition. The Director stated that the inspecting officer found no ongoing religious activities at either of the sites that the Petitioner claimed as its places of worship and that the signatory of the petition "was unable to say anything about the Beneficiary's proposed hours of employment or compensation." On appeal, the Petitioner contended that it had submitted sufficient evidence to establish its bona fides as a religious organization and evidence that it was operating at both of the locations claimed. On motion, the Petitioner states that following the onsite inspection, it rented new space "for its main quarters," and submits evidence of the rented premises and a copy of a flyer in which it announced its move to the new address.

The fact that the Petitioner rented a new facility and conducts services at a new location does not explain the lack of evidence of religious activity at the previous locations or the signatory's inability to provide details about the Beneficiary's employment at the time of the site inspection. The evidence submitted does not overcome the findings of the site inspection or the basis of our prior dismissal.

We also found that the Petitioner had not established how it intended to compensate the Beneficiary. In the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner stated it would pay the

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Beneficiary wages of \$387.00 per week, and that it had an annual gross income of \$100,000. In response to a January 17, 2013, request for evidence, the Petitioner submitted an employment contract dated March 5, 2013, indicating it would pay the Beneficiary “250.00 per week,” for “a total of \$13,000/yearly,” and would provide accommodation, food, and traveling expenses. On appeal, we found the evidence of record insufficient to establish how the Petitioner intends to provide the proffered compensation.

On motion, the Petitioner asserts that it would receive “financial help of the overseas Nigerian parental entity,” which “should be able to pay the salary of the Beneficiary.” The Petitioner submits a March 27, 2012, letter from the [REDACTED] attesting that it “will undertake the responsibility of sponsoring [the Beneficiary] to the United States.” Documentation submitted includes copies of bank statements in the name of [REDACTED] in Nigeria for the period October 1, 2013, to March 19, 2014.

[REDACTED] pledge to sponsor the Beneficiary in the United States does not overcome our finding that the Petitioner submitted insufficient evidence of its ability to compensate the Beneficiary according to the terms of the petition. The regulation at 8 C.F.R. § 214.2(r)(11) states that the Petitioner must submit verifiable evidence explaining how “the [P]etitioner” will compensate the Beneficiary or how the Beneficiary will be self-supporting. The evidence submitted on motion does not demonstrate how the Petitioner will provide the required compensation or how the Beneficiary would be self-supporting as required by regulation. Rather the Petitioner now asserts that another entity will provided the Beneficiary’s compensation. A petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm’r 1978).

The evidence submitted in support of the motion to reopen does not overcome the basis of our decision dismissing the appeal, and the motion will be denied.

II. MOTION TO RECONSIDER

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 United States Citizenship and Immigration Services (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).

The Petitioner asserts that it “has additional information that could change the decision and/or that the decision was made in error.” The Petitioner does not, however, point out any alleged error in the decision or state any reason for reconsideration which would establish that the decision was based on an incorrect application of law or USCIS policy as required by regulation. Rather, the Petitioner requests a reconsideration of our decision based on “changed circumstances and conditions since the

time [] the Inspector visited the Church [in] April of 2013.” The evidence does not establish that our prior decision was incorrect based on the evidence of record at the time the decision was rendered. The motion must, therefore, be denied.

III. ADDITIONAL FILING REQUIREMENTS

Finally, the regulation at 8 C.F.R. §§ 103.5(a)(1)(iii) lists the filing requirements for motions to reopen and motions to reconsider. Section 103.5(a)(1)(iii)(C) requires that motions be “[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding.” In this matter, the motions do not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motions do not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C), they must be dismissed.

IV. CONCLUSION

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, that burden has not been met.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of I-G-O-P-D-C-, Inc.*, ID# 13618 (AAO Sept. 24, 2015)