



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

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

MATTER OF E-C-C-P-L-N-

DATE: OCT. 19, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a Christian church, seeks to classify the Beneficiary as a nonimmigrant religious worker to perform services as a senior pastor. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(R), 8 U.S.C. § 1101(a)(15)(R). This nonimmigrant classification allows non-profit religious organizations, or their affiliates, to temporarily employ foreign nationals as ministers, in religious vocations, or in other religious occupations in the United States.

The Director of the California Service Center denied the petition, concluding that the Petitioner had not satisfactorily passed the site inspection process. We dismissed a subsequent appeal.

The matter is now before us on a motion to reconsider. We will deny the motion.

I. LAW

A motion to reconsider must offer 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. 8 C.F.R. § 103.5(a)(3). A motion to reconsider is based on the existing record and the Petitioner may not introduce new facts or new evidence relative to his or her arguments. 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 materials. *Compare* 8 C.F.R. § 103.5(a)(3) *and* 8 C.F.R. § 103.5(a)(2). In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(iii) requires that the motion must 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 and, if so, the court, nature, date, and status or result of the proceeding.” Furthermore, the regulation at 8 C.F.R. § 103.5(a)(4) requires that “[a] motion that does not meet applicable requirements shall be dismissed.”

Non-profit religious organizations may petition for foreign nationals to work in the United States for up to five years to perform religious work as ministers, in religious vocations, or in other religious occupations. The petitioning organization must establish that the foreign national-beneficiary has been a member of a religious denomination for at least the two-year period before the date the petition is filed. *See generally* section 101(a)(15)(R) of the Act, 8 U.S.C. § 1101(a)(15)(R).

(b)(6)

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The implementing regulation at 8 C.F.R. § 214.2(r)(1) requires that to be approved for temporary admission to the United States, or extension of status, a foreign national 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.

In addition, the regulation at 8 C.F.R. § 214.2(r)(16) allows USCIS to verify information supporting the petition through any means deemed appropriate, including an on-site inspection. It further provides: "If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition."

II. PROCEDURAL HISTORY

In 2007, the Petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking to extend the Beneficiary's status as a nonimmigrant religious worker. The Director initially denied the petition in 2009, then reopened and denied the petition in. We remanded the Petitioner's first appeal in 2012, as the Director had not documented the results of any site inspection at its main location or at the church where the Beneficiary was supposed to work in [REDACTED]. The Director reopened the petition, performed site inspections at several addresses associated with the Petitioner, and afforded the organization an opportunity to respond to the findings. In a 2015 decision, the Director determined that the Petitioner did not overcome the findings of those inspections, which raised concerns as to (1) whether the Petitioner operated as a religious organization, (2) the viability of the Beneficiary's proposed employment, (3) whether she had maintained her nonimmigrant status, and (4) whether she was working the required 20 hours per week. The Director accordingly found that the Petitioner had not established eligibility by a preponderance of the evidence. The Petitioner again filed an appeal, which we dismissed in March 2016. Within our dismissal, we noted discrepancies in the record and found that the Petitioner had not established that it operated as a church at the specified locations during

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the stated timeframe. The matter is now before us on a motion to reconsider. We have reviewed the entire record of proceedings before us.

III. ANALYSIS

The issue within this motion relates to whether the Petitioner operated as a church at particular locations between April 2007 and April 2008, the timeframe of the Beneficiary's proposed employment. For the reasons discussed below, we will affirm our previous decision and the petition will remain denied.

We note that the Petitioner has not submitted a statement regarding the validity of our most recent decision and whether it has been, or is subject of, any judicial proceeding as required by the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C). As such, the regulation at 8 C.F.R. § 103.5(a)(4) mandates that we dismiss the motion. Notwithstanding this omission, we will discuss the merits of the motion.

On motion, the Petitioner contends that the record demonstrates it held services during the relevant timeframe at [REDACTED] the proposed work location for the Beneficiary, and it identifies supporting evidence that was discussed in our previous decision. Our March 2016 decision stated:

As evidence relating to this location, the Petitioner has offered a letter from [REDACTED] who explained that she attended services at the [REDACTED] address from 2008 to 2010. However, [REDACTED] did not indicate the dates that the church began or stopped occupying this space. Two 2015 letters from congregants [REDACTED] and [REDACTED] suggest the church moved to this address in 2009. While the record contains numerous church pamphlets with the [REDACTED] address and the [REDACTED] address, there are no pamphlets with the proposed location for the Beneficiary's employment.[footnote omitted] Similarly, while the Petitioner states on appeal that it previously submitted a lease for that location, the lease is not in the record.

We previously explained why this material did not satisfy its burden of proof, and the Petitioner has not established that it has overcome these deficiencies. Pertaining to the lease agreements that the Petitioner maintains were provided, we noted a lack of such items on record within our March 2016 appellate decision and a review of the record confirms that such documentation has not been submitted. The evidence does not include any lease executed for this address establishing the Petitioner performed regular services at this location between April 2007 and April 2008.

Next, the Petitioner quoted our appellate decision relating to two site inspections performed in 2012 and 2015. The Petitioner contends "as the government is admitting that they did not performed [*sic*] a site inspection [at [REDACTED] therefore, it is contradictory to conclude that the [P]etitioner was not operating at this address." Our decision noted that the site inspections did not

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reveal that the Petitioner was operating or located at this address. Irrespective of the site inspections, we stated the Petitioner had not offered documentary evidence establishing that it operated at the [REDACTED] address during the relevant timeframe. This remains accurate as the record does not contain probative documentation establishing the Petitioner operated as a church at this address between April 2007 and April 2008.

Further, in our previous decision we found discrepancies in the record with regard to the locations at which the Petitioner held services during the period in question. We noted that the provided information contained overlapping dates but that the Petitioner had not indicated it was using more than one location at the same time. On motion, the Petitioner contends that it did in fact submit evidence that it was using multiple facilities simultaneously. As examples, it points to two affidavits it submitted in response to a January 2014 notice of intent to deny from the Director.

In one undated affidavit, [REDACTED] the Petitioner's president, indicated that the church used several locations in 2007 and 2008, and he provided the years and addresses of four locations where the church operated. As [REDACTED] only identified the year during which each location was used, without the month and day, we cannot determine if his affidavit supports the Petitioner's statement that it used more than one location simultaneously. The second affidavit is from the Beneficiary. Within the testimonial she describes how the church was located at the first facility in 2007 and due to a growing congregation, the church moved to the second address at [REDACTED] in [REDACTED]. However, the Beneficiary does not signify that the church occupied more than one location at a time during the relevant timeframe. Further, our appellate decision notified the Petitioner that because of apparent inconsistent or incomplete information pertaining to where and when the church performed services, statements from individuals would not serve as sufficient probative evidence. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). We also notified the Petitioner that independent objective materials would be necessary to meet its burden of proof. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Therefore, even if these previously considered affidavits were consistent with the Petitioner's claim that the church operated at multiple locations at the same time, such evidence would not meet the burden of proof.¹

In a separate argument, the Petitioner references USCIS' statements that [REDACTED] was the registered agent of several active and inactive businesses in Florida, and his alleged scheme to commit fraud against the government. These were elements contained in notices from the Director

¹ The Petitioner's motion brief indicates that if we are determining the affidavits lack credibility, we should raise this issue immediately. We are not, however, making an adverse finding regarding the credibility of those providing the statements. Instead, we note that statements made without supporting documentation are of limited probative value. *Id.* If they are not accompanied by additional corroborating evidence, the agency is not in a position to sufficiently evaluate the claims within the letters. In a similar scenario we have determined that the submission of letters supporting a petition is not presumptive evidence of eligibility; USCIS may evaluate the content of the letters as to whether they support the foreign national's eligibility. *Cf. Matter of Caron International*, 19 I&N Dec. at 791, 795 (Comm'r 1988). USCIS may give less weight to an opinion that is not corroborated, in accord with other information. *Id.*; see also *Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008).

in 2007 and 2011. These issues were not included in our most recent March 2016 appeal decision and are not pertinent to this motion. In this instance, the Petitioner did not file a motion on the Director's decisions. Rather, the Petitioner filed a motion to reconsider our 2016 appeal dismissal and we will only address arguments and evidence relating to the grounds underlying that decision.

The Petitioner closes the motion maintaining the government erred as a matter of law in denying the visa petition. However, as discussed above, it is the Petitioner's responsibility to specify how we committed an error in applying the law or agency policy in our March 2016 decision. It has not done so within this motion. Further, the Petitioner has not established that our decision was incorrect based on the evidence of record at the time of the initial decision.

IV. CONCLUSION

For the reasons discussed above, the Petitioner has not satisfied the requirements of a motion to reconsider. The Petitioner has not met its 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).

ORDER: The motion to reconsider is denied.

Cite as *Matter of E-C-C-P-L-N-*, ID# 9787 (AAO Oct. 19, 2016)