



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Public Copy

File:

Office: Vermont Service Center

Date: AUG 1 2001

IN RE: Petitioner:
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C)

IN BEHALF OF PETITIONER:

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

for Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. An appeal from the decision was dismissed by the Associate Commissioner for Examinations. A motion to reopen/reconsider was dismissed by the Associate Commissioner. The matter is again before the Associate Commissioner on motion to reopen/reconsider. The motion will be dismissed.

The petitioner is described as a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), in order to employ her as a French and math teacher at its affiliated school.

The Form I-360 petition for special immigrant classification was filed on May 9, 1997. The center director denied the petition on August 28, 1997, finding that the duties of the prospective position in teaching secular subjects was not qualifying as a religious occupation for the purpose of special immigrant classification.

In a decision dated October 20, 1998, the Associate Commissioner affirmed the decision. A subsequent motion was dismissed June 7, 2000, as not meeting the applicable requirements of a motion.

On motion counsel asserts that the center director's decision was a "misapplication of the law and the analysis used in reaching the decision is inconsistent with the information provided and with precedent decision." Counsel also submits a statement from the petitioner dated July 5, 2000, stating that the beneficiary has recently been appointed a "deaconess."

According to 8 C.F.R. 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. In order to prevail on a motion to reopen, the petitioner must establish that the new facts and/or evidence presented are material and were unavailable at the time the prior decision was issued. Id.

According to 8 C.F.R. 103.5(a)(3), 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 Service policy. To prevail on a motion for reconsideration, the petitioner must establish that the prior decision rests on an incorrect application of law, so that the decision "was incorrect based on the evidence of record at the time of the initial decision." Id.

According to 8 C.F.R. 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

On motion, counsel challenges the original decision denying the petition and dismissing the appeal of that decision. Counsel does not address the grounds of dismissal of the previous decision, in

this case the motion dismissed on June 7, 2000. The only issue that may be challenged on a motion to reopen or reconsider is the previous decision. Counsel has not addressed that decision. Counsel's argument relating to the proposed position constituting a religious occupation was considered and found insufficient in the original appellate decision.

It is noted that counsel originally cited an unpublished administrative decision of the center director relating to special immigrant religious workers and refers to that decision as a "precedent." Counsel's reference is in error. The prior unpublished administrative decisions of the Service carry no precedential value. See 8 C.F.R. 103.3(c). Furthermore, the Service is not bound by prior decisions which may have been issued in error.

By this action, counsel essentially seeks a readjudication of the underlying petition and waiver of the thirty-day appeal period. There is no provision for such an adjudication on a motion to reopen or a motion to reconsider. Therefore, counsel failed to establish that this action meets the applicable requirements of a motion and it must be dismissed.

Administrative notice is made that the record does not contain the required evidence that the petitioner, the Rhema Christian Center is a qualifying tax exempt religious organization. Certainly, there is no evidence that its affiliated school is a qualifying religious organization pursuant to sections 501(c)(3) and 170(b)(1)(A)(i) of the Internal Revenue Code. See 8 C.F.R. 204.5(m)(3).

ORDER: The motion is dismissed; the decision of October 20, 1998 is affirmed.