

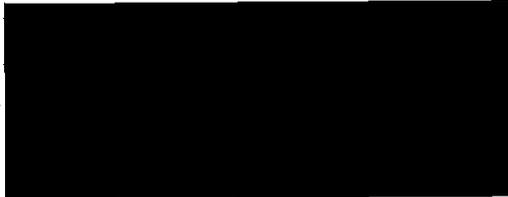


U.S. Department of Justice

Immigration and Naturalization Service

CA

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



Public Copy

File:

Office: Vermont Service Center

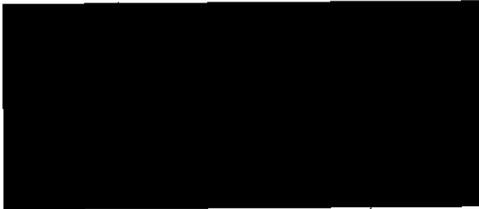
Date: AUG 1 2001

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 was dismissed by the Associate Commissioner for Examinations. A subsequent motion to reopen was rejected by the Associate Commissioner. The matter is again before the Associate Commissioner on motion to reopen. The motion will be dismissed.

The petitioner is 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 him as a "pastoral assistant" at an annual salary of \$25,000, plus housing and other benefits.

The petitioner filed a Form I-360 petition for special immigrant classification on September 9, 1997. The petition was denied in a decision dated December 2, 1997. The petition was denied on the grounds that the petitioner failed to establish the ability to pay the proffered wage pursuant to 8 C.F.R. 204.5(g)(2).

The petitioner filed a timely appeal from the decision. The Associate Commissioner, by and through the Director, Administrative Appeals Office ("AAO"), dismissed the appeal in a decision dated January 4, 1999. The AAO found that the petitioner's financial statements did not demonstrate the ability to pay the proposed salary. The AAO further found that the petitioner failed to submit proof that the beneficiary had been continuously employed in a religious occupation for the preceding two years as required by 8 C.F.R. 204.5(m)(1), that the proposed position constituted a qualifying "religious occupation" as defined at 8 C.F.R. 204.5(m)(2), that the beneficiary was qualified to perform a religious occupation pursuant to 8 C.F.R. 204.5(m)(3), or that a qualifying job offer had been tendered pursuant to 8 C.F.R. 204.5(m)(4).

The petitioner's representative timely filed a motion to reopen arguing that the Service had not fully reviewed the financial documentation submitted. In a detailed decision, the AAO found the argument unpersuasive and rejected the motion. The petitioner now files a second motion submitting additional financial information.

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 were unavailable at the time the prior decision was issued. According to 8 C.F.R. 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

On motion, the petitioner's representative has submitted documentation addressing the financial ability issue. He did not

address the remaining grounds of ineligibility cited in the appellate decision. The representative has not shown that its new evidence was previously unavailable and fails to acknowledge the additional grounds of ineligibility. Counsel essentially seeks a readjudication of the underlying petition and a 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 has failed to establish that this action meets the applicable requirements of a motion and must be dismissed.

The petitioner is free to file a new petition without prejudice.

ORDER: The motion is dismissed.