

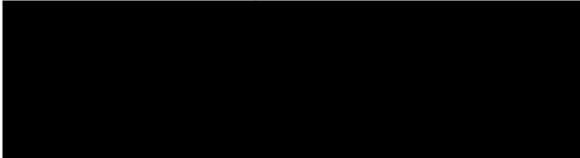


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U.S. Department of Justice

Immigration and Naturalization Service

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



File: [Redacted] Office: Nebraska Service Center

Date: JUL 3 2001

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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)

Public Copy

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

Robert P. Wiemann
for Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was revoked by the Director, Nebraska Service Center. The center director granted a motion to reopen the proceeding and affirmed the revocation. An appeal was summarily dismissed by the Associate Commissioner for Examinations. 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 deacon.

This matter has an extensive procedural history. The I-360 petition for special immigrant classification was originally filed on January 6, 1994, and was approved on September 22, 1994. In subsequent adjustment of status proceedings, a field investigation was conducted during which the Service was unable to locate the petitioning church at the address provided. The center director therefore properly served a notice of intent to revoke the petition and ultimately did revoke it in a decision dated August 31, 1998.

Counsel for the petitioner filed a motion to reopen the proceeding which was dismissed on procedural grounds on August 20, 1999. The director granted a second motion to reopen, affirmed the original basis for revocation of the petition, noted multiple additional grounds of ineligibility, and dismissed the motion on January 7, 2000.

Counsel timely filed an appeal from the director's decision on February 4, 2000 and indicated that a written brief would be forthcoming within thirty days. The Associate Commissioner, by and through the Director, Administrative Appeals Office ("AAO"), summarily dismissed the appeal on August 9, 2000, finding that a brief had never been received.

Counsel now files a motion to reopen/reconsider that appellate proceeding. Counsel argues that a brief was submitted to the Nebraska Service Center and submits a photocopy of a postal receipt from counsel to the center director dated March 6, 2000.

The postal receipt reflects no identifying information to confirm that it represents the submission of a written brief to support the appeal. It is noteworthy that there is no formal authority for the late submission of appellate briefs and it has been merely Service policy to grant extensions as a matter of discretion. Nevertheless, the motion to reopen/reconsider will be granted.

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. 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." 8 C.F.R. 103.5(a)(3).

In the brief dated March 1, 2000, counsel argues that the church had moved its location resulting in the inability of Service agents to contact the petitioning organization to verify the nature of the employment-based immigrant petition. Counsel argued that the beneficiary had submitted a notice of change of her residential address, but no argument was made that the Service was notified of the relocation of the petitioning church. Counsel argued that it was incumbent on the Service to investigate further and determine the new location of the church.

This argument was made to and rejected by the center director in her decision of January 7, 2000. Counsel has not established that the underlying decision was incorrect based on the evidence of record at the time of the initial decision. Counsel cited no legal authority whereby the decision was incorrect as a matter of fact or of law. Therefore, the motion will be dismissed.

The director also noted multiple eligibility grounds wherein the petitioner failed to submit sufficient evidence. The appellate brief addresses these issues in writing, but no additional evidence was submitted. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). For this reason as well, the motion will be dismissed.

It is noted that counsel initially requested expedited processing due to the pending termination or "sunset" of the special immigrant religious worker provision. The sunset date has now been extended. The petitioner is free to file a new petition for classification of the beneficiary without prejudice.

ORDER: The motion is dismissed.