



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

JUL 24 2001

File: [Redacted] Office: Vermont Service Center

Date:

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)

IN BEHALF OF PETITIONER:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

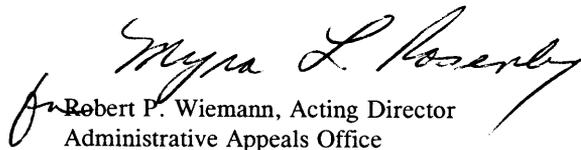
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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, 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. The Associate Commissioner dismissed a motion to reopen the matter as improperly filed. The matter is again before the Associate Commissioner on motion to reopen. The motion will be dismissed.

The petitioner is an individual who seeks classification 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 be employed by a church as an "elder" at a salary of \$300 per week.

The petitioner filed a Form I-360 petition for special immigrant classification on September 12, 1996. The petition was denied in a decision dated January 10, 1997. The petition was denied on the grounds that the petitioner failed to establish that the proposed position constituted a qualifying "religious occupation" as defined at 8 C.F.R. 204.5(m)(2), failed to establish that the petitioner had been continuously carrying on a religious occupation for at least two years preceding the filing of the petition pursuant to 8 C.F.R. 204.5(m)(1), and failed to establish the ability to pay the proposed 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 February 29, 1998. The AAO found that the petitioner failed to overcome the grounds for denial. The AAO further noted that the record did not demonstrate that a qualifying job offer had been tendered pursuant to 8 C.F.R. 204.5(m)(4).

A subsequent motion to reopen was dismissed for lack of standing.

In the instant motion, the petitioner stated:

In the last 11 months, I have dedicated myself a lot more to this ministry. Every week I host two television programs bringing hope, peace and spittle warfare [sic] to our community. I am also involved once a week through a radio program. Presently position I hold in the congregation is of CO-Pastor as our Senior Pastor gets ready to retire...

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)(4), a motion that does not meet applicable requirements



shall be dismissed.

The petitioner's statements do not constitute new evidence. The petitioner 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, the petitioner failed to establish that this action meets the applicable requirements of a motion and must be dismissed.

ORDER: The motion is dismissed.