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

C1

[redacted]

Public Copy

File: [redacted] Office: Vermont Service Center Date: JUL 30 2001

IN RE: Petitioner:
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: Self-represented

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

Gregory L. Rosenberg

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. The mater is again before the Associate Commissioner on motion to reopen or reconsider. 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 her as a "spiritual social worker" at a salary of $150 per week plus room and board.

The Form I-360 petition for special immigrant classification was filed on April 23, 1999, and was denied on its merits in a decision dated March 6, 2000. The center director denied the petition finding that the petitioner failed to establish that the proposed position is a qualifying religious occupation pursuant to 8 C.F.R. 204,5(m)(2) and failed to establish that the beneficiary had been continuously employed in a religious occupation for the two years preceding the filing of the petition as required by 8 C.F.R. 204.5(m)(1).

The petitioner timely filed an appeal from the decision. In a decision dated July 13, 2000, the Associate Commissioner determined that the petitioner failed to overcome the grounds for denial and dismissed the appeal. The decision also noted that the rate of remuneration was insufficient to establish that the alien would not be dependent on supplemental employment and thereby was not a qualifying job offer pursuant to 8 C.F.R. 204.5(m)(4).

The petitioner submitted an untimely motion to reopen the proceeding stating that the beneficiary had been granted R-1 classification in the same position and asserting that they do not understand how the immigrant petition could be denied.

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 the petitioner expresses disagreement with the decision to deny the petition, but has not presented any new material evidence and has not identified a misapplication of law. The petitioner 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, the petitioner failed to establish that this action meets the applicable requirements of a motion and must be dismissed.

Administrative notice is made that the Service is not bound by past administrative decisions which may have been issued in error. See National Labor Relations Bd. v. Seven-up Bottling Co. of Miami, 344 U.S. 344, 349 (1953).

ORDER: The motion is dismissed; the decision of July 13, 2000 is affirmed.