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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



Public Copy

File: EAC-96-260-52157

Office: Vermont Service Center

Date: MAY 2 2001

IN RE: Petitioner:
Beneficiary:



Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:



identification 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

Mary L. Rosenberg
for Robert P. Wiemann, Acting Director
Administrative Appeals Office

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

The petitioner is a church that 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), to serve as an assistant to the minister at a salary of \$250 per week, or \$13,000 per year.

The center director denied the petition finding that the petitioner failed to establish the ability to pay the proffered wage pursuant to the requirements set forth at 8 C.F.R. 204.5(g)(2). The Associate Commissioner dismissed an appeal from that decision finding that a self-prepared financial statement did not satisfy the evidentiary requirements of the provision which requires that the evidence be in the form of annual reports, federal tax returns, or audited financial statements. The Associate Commissioner further found that the evidence of record was insufficient to establish that the proffered position was a qualifying religious vocation or occupation or that the beneficiary had had the requisite two years of experience in a religious vocation or occupation. A subsequent motion was dismissed because it did not meet the requirements of a motion to reopen or reconsider.

In the instant motion, counsel for the petitioner expressed the petitioner's disappointment in the decision and argued that a letter from the church's accountant should have been accepted on motion and that this should be the only eligibility requirement at issue.

To prevail on a motion to reopen or reconsider, 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). After a review of the petitioner's arguments in support of the motion, it is concluded that the prior decision was correct. The petitioner failed to satisfy the documentary requirements set forth in the pertinent regulation.

Further administrative notice is made that, contrary to counsel's assertion, in order to prevail in an appellate proceeding, a petitioner must overcome all grounds cited as a basis for denial of a petition. Counsel's assertion that he need only overcome one of the enumerated grounds of ineligibility is without merit.

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

ORDER: The motion is dismissed.