



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



JAN 03 2002

File [redacted] Office: Texas 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: [redacted]

Public Copy

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, Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, Texas Service Center. An appeal was dismissed by the Associate Commissioner for Examinations. The matter is again before the Associate Commissioner on a motion to reopen and a motion to reconsider. The motion will be dismissed.

The petitioner is a church claiming a congregation of 350 members. 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 "musician" at a salary of \$1,500 per month.

The petitioner filed a Form I-360 petition for special immigrant classification on September 29, 1997. The petition was denied on its merits in a decision dated April 13, 1998. The center director found that the petitioner failed to establish that the beneficiary's claimed volunteer work with the church satisfied the requirement that he was continuously carrying on a religious occupation for at least the two years preceding the filing of the petition. The center director also found that the petitioner failed to submit the required documentation necessary to establish the ability to pay the proffered wage.

The petitioner, by and through counsel, filed an appeal from the decision with an appellate brief and additional evidence. The Associate Commissioner, by and through the Director, Administrative Appeals Office ("AAO"), reviewed the record and dismissed the appeal finding that the petitioner had failed to overcome the grounds for denial. The AAO further noted that the record was insufficient to show that the position of musician constituted a qualifying religious occupation or that a valid job offer had been tendered.

On motion, counsel requested both reconsideration and reopening of the decision. Counsel for the petitioning church argued for reconsideration of the decision by citing several unpublished Service decisions and argued that the type of volunteer work engaged in by the beneficiary should satisfy the prior experience requirement. Counsel requested reopening of the proceeding to consider new evidence and submitted additional financial documentation asserting that the documentation was previously unavailable.

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. In order to prevail on a motion for reconsideration, a 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.

The unpublished administrative decisions relied on by counsel do not have binding precedential value. Only decisions published and designated as precedents by the Associate Commissioner are binding on Service officers. See 8 C.F.R. 103.3(c). Counsel disagrees with the Service's interpretation of its own regulations, but has not shown that the AAO decision was based on an incorrect application of law or Service policy. Accordingly, counsel has not established a basis for reconsideration of the decision.

Counsel furnished a letter from an official of the petitioner stating that the financial documentation now submitted was previously unavailable due to renovations being made at the church. The explanation that the petitioner's tax returns or annual reports were previously unavailable to be submitted in support of the visa petition due to renovations being performed at the church is not entirely reasonable. Even if such documentation were accepted on motion, the financial evidence does not address the prior experience requirement as the primary ground of ineligibility. Accordingly, counsel has not established a basis for reopening of the decision.

It must be concluded that the petitioner has failed to establish that this action meets the applicable requirements of a motion and it must be dismissed.

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

**ORDER:** The motion is dismissed.