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Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

File:  Office: TEXAS SERVICE CENTER

Date:

AUG 15 2003

IN RE: Petitioner:
Beneficiary:

Petition: Immigrant 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)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert F. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, reconsidered on the petitioner's motion, and denied again by the Service Center director. The petitioner then appealed the second denial. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal, as well as a subsequent motion to reopen. The matter is now before the AAO on a second motion to reopen. The motion will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as a church school teacher. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a church school teacher immediately preceding the filing date of the petition.

In its appellate decision of July 16, 2001, the AAO concurred with the director's finding and cited that the sparse documentation then in the record precluded a finding of eligibility. The AAO dismissed the petitioner's first motion, on August 14, 2002 stating that it was not timely filed and that "the petitioner has not demonstrated that the documentation [submitted on motion] was previously unavailable and has not established that the prior decision was an incorrect application of law. The petitioner essentially seeks a readjudication of the underlying petition and a waiver of the thirty-day [motion] period."

Like its earlier appellate decision, the AAO's decision of August 14, 2002 advised the beneficiary of the regulations governing motions at 8 C.F.R. § 103.5(a)(1)(i). This regulation requires that a motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, but indicates that this 30-day period may be waived if the petitioner can demonstrate that the delay was reasonable and beyond the petitioner's control. This waiver is discretionary and does not provide an open-ended period for the petitioner to file a motion.

The petitioner's latest motion was received on October 7, 2002, well after the expiration of the 30-day motion filing period. The cover letter for the motion is dated September 20, 2002, indicating that the 30-day filing period had already elapsed before the motion was even prepared. The letter offers no explanation for the untimely filing of the motion, and therefore the petitioner has made no effort to show eligibility for the discretionary waiver of the filing period.

In the latest motion, the petitioner has shown no reason why the AAO's dismissal of August 14, 2002 should not stand. Indeed, the latest motion does not directly discuss the AAO's two previous decisions at all. The arguments advanced on motion are directed entirely at the original denial of the petition. Counsel states "[w]e respectfully request your office to review the Texas District [sic] Office's decision." The AAO has already reviewed this decision, as shown by the appellate decision issued on July 16, 2001.

The mechanism for filing motions to reopen or to reconsider is a means to remedy adjudicative error, not a means by which a petitioner may indefinitely prolong or repeat the adjudication of an already-denied petition. If an appeal or motion is dismissed, the filing of a subsequent motion that does not attempt to address the basis for the dismissal does not compel a *de novo* review of the underlying

petition. The AAO has already made these points in its last decision, and the petitioner has responded by asking, yet again, for appellate review of the Service Center director's decision, without demonstrating any legal or procedural flaws in the decisions that the AAO has already issued in this matter.

The evidence submitted with the petitioner's third motion to reopen contains some materials that should have been submitted in response to the director's initial denial of the petition. These materials do not show that the AAO was in error when it dismissed the petitioner's appeal or prior motion, and their submission does not nullify those decisions. Their submission at this late date serves only to underscore that the original appeal was in fact deficient, just as the AAO determined over two years ago.

Pursuant to 8 C.F.R. § 103.5(a)(4), a motion that does not meet the applicable requirements shall be dismissed. For the reasons cited above, the present motion does not meet those requirements.

ORDER: The motion is dismissed.