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Citizenship and Immigration Services

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CJ

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

[REDACTED]

SEP 22 2003

File: [REDACTED] Office: Texas Service Center

Date:

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)

ON BEHALF OF PETITIONER:

[REDACTED]

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 Citizenship and Immigration Services (CIS) 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 P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Texas Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is before the Administrative Appeals Office (AAO) on motion to reopen. The motion will be dismissed.

The petitioner is an individual who 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 work for a church as a lay brother.

The petitioner filed Form I-360 Petition for Ameraisian, Widow or Special Immigrant, on August 4, 2000. The petition was denied in a decision dated May 15, 2001. The center director found that the petitioner failed to establish that the proposed position qualified as a religious occupation for the purpose of special immigrant classification.

The petitioner filed an appeal from the director's decision on June 7, 2001, with additional evidence. The Associate Commissioner for Examinations dismissed the appeal finding that the petitioner had failed to overcome the ground for denial. In addition, the Associate Commissioner found that the petitioner failed to establish that it is a qualifying organization exempt from, or eligible for exemption from, taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations pursuant to 8 C.F.R. § 204.5(m)(3)(i); and that it has the ability to pay the proffered wage pursuant to 8 C.F.R. § 204.5(g)(2) and (iii); that the beneficiary has the requisite continuous work experience in a qualifying religious occupation for the two years preceding the filing of the petition pursuant to 8 C.F.R. § 204.5(m)(3)(ii)(A).

Regulations at 8 C.F.R. § 103.5(a)(iii) provide that a petitioner may file a motion to reopen or a motion to reconsider by filing Form I-290A with required fee. According to 8 C.F.R. § 103.5(a)(1)(i), any motion to reopen or reconsider must be filed by the petitioner within 30 days of the decision that the motion seeks to reopen or reconsider, except that failure to do so may be excused where the delay was reasonable and was beyond the control of the petitioner.

The appellate decision of the AAO was issued on January 3, 2002. The Motion to Reopen/Reconsider by counsel for the petitioner was filed on June 25, 2002. Counsel states by letter of June 21, 2002, that the motion was timely filed, and that a copy of a receipt for express mail is attached showing that the motion was mailed on January 31, 2002. No such evidence is in the file. The motion was untimely filed and will be dismissed.

ORDER: The motion is dismissed.