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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE:

[REDACTED]
EAC 02 037 52501

Office: VERMONT SERVICE CENTER

Date: MAR 11 2005

IN RE:

Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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 of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed, the previous decision of the AAO will be affirmed and the petition will be denied.

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 (the Act), 8 U.S.C. § 1153(b)(4).

The director denied the petition on November 15, 2002. On December 18, 2002, the petitioner, through counsel, filed a timely appeal but requested an additional 30 days in which to submit "a brief and/or evidence." On January 29, 2004, after determining the record contained no further submission in support of the appeal, the AAO summarily dismissed the petitioner's appeal.

On March 4, 2004, counsel for the petitioner filed the instant motion to reopen and reconsider.¹ Counsel asserts that documents were submitted to the AAO within thirty days of the appeal and that "[s]omehow, apparently, the materials went astray in the course of the appeal." The regulation at 8 C.F.R. § 103.5(a)(2) states that a "motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." Further, the regulation at 8 C.F.R. § 103.5(a)(3) states:

A motion to reconsider must state the reasons for reconsideration and be supported by any precedent decisions to establish that the decision was based on an incorrect application of law or [Citizenship and Immigration Services (CIS)] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Although counsel provides a copy of the documents purportedly submitted on January 16, 2003, subsequent to the filing of the appeal, he fails to provide any evidence to support his assertion that these documents were actually sent and/or received by CIS. The statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

As the petitioner's motion is not supported by affidavits or other documentary evidence, such as a certified mail receipt or a mail tracking number to show the AAO's decision was incorrect, or precedent decisions to establish that the decision was based on an incorrect application of law or CIS policy, the motion does not meet the requirements of the regulations. Accordingly, the motion must be dismissed.

ORDER: The motion is dismissed. The previous decision of the AAO is affirmed. The petition is denied.

¹ Despite the fact that counsel's motion was received more than thirty days after the date of the AAO's decision, counsel provides evidence that the director's decision was not actually mailed until February 3, 2004. Accordingly, as the motion was filed on March 4, 2004, it is considered timely filed because it was received within 33 days of the mailed decision.