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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

[Redacted]

AUG 1 2001

File: [Redacted] Office: Vermont 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, Acting Director
Administrative Appeals Office

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

The petitioner is a church. 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 her as a Kansa at an annual salary of \$14,000.

The petitioner filed a Form I-360 petition for special immigrant classification on January 14, 1998. The petition was denied in a decision dated July 13, 1998. The petition was denied on the grounds that the petitioner failed to establish that the beneficiary had satisfied the requirement of at least two years of continuous experience in a religious occupation pursuant to 8 C.F.R. 204.5(m)(1) and failed to establish that the petitioner had adequately established that the proposed position constituted a qualifying "religious occupation" as defined at 8 C.F.R. 204.5(m)(2).

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"), dismissed the appeal finding that the petitioner had failed to overcome either ground for denial. The AAO decision further found that the petitioner had failed to submit the required documentation to establish the ability to pay the proffered wage pursuant to 8 C.F.R. 204.5(g)(2).

The appellate decision was issued May 24, 2000. Counsel for the petitioner filed a motion to reopen and submitted additional evidence addressing the three grounds of ineligibility.

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 are material and were unavailable at the time the prior decision was issued. Id. According to 8 C.F.R. 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

On motion, counsel has submitted new evidence in support of the original petition. He has not advanced a claim that the new evidence was somehow unavailable at the time the petition was filed, at the time the center director issued a request for additional evidence, or at the time the appeal was filed. Counsel essentially seeks a readjudication of the underlying petition and

a waiver of the thirty-day appeal period. There is no provision for such an adjudication on a motion to reopen. Therefore, counsel failed to establish that this action meets the applicable requirements of a motion to reopen and must be dismissed.

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

ORDER: The motion is dismissed.