



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
JLLB, 3rd Floor
Washington, D.C. 20536

Public Copy



AUG 1 2001

File: [Redacted] Office: Vermont Service Center

Date:

IN RE: Petitioner:
Beneficiary:



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:



Identifying data removed to prevent clearly unwarranted invasion of personal privacy

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
for 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. A subsequent motion to reopen the proceeding was granted and the prior decision was affirmed. The matter is again before the Associate Commissioner on motion to reopen/reconsider. 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 him as an "outreach worker" at a wage of \$250 per week.

The Form I-360 petition for special immigrant classification was filed on August 23, 1997. It was denied on January 13, 1998, on the grounds that the proposed position had not been shown to be a traditional occupation in the denomination requiring specific theological training and thereby was not a qualifying religious occupation for the purpose of special immigrant classification and because the beneficiary's claimed volunteer work with the church, while engaged in a full-time secular occupation as a taxi driver, did not satisfy the requirement of having been continuously engaged in a religious occupation for the two years preceding the filing of the petition.

The Associate Commissioner affirmed the center director's decision on appeal and on the first motion to reopen. The Associate Commissioner also determined that the petitioner failed to establish the ability to pay the proposed wage.

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)(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. To prevail on a motion for reconsideration, the 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.

On the instant motion, counsel for the petitioner disputes the analysis applied to the evidence of record in determining that the beneficiary is ineligible for the benefit sought, but has not shown that such an analysis was an incorrect application of law and has not submitted additional evidence. The record clearly shows that the petitioner has had ample opportunity to support its petition

with the original filing of the petition, in response to a written request for additional evidence, on appeal, on motion to reopen, and now on a second motion to reopen/reconsider. By the instant motion, the petitioner essentially seeks a readjudication of the underlying petition and waiver of the thirty-day appeal period. There is no provision for such an adjudication on a motion to reopen or a motion to reconsider. Therefore, the petitioner failed to establish that this action meets the applicable requirements of a motion and it must be dismissed.

ORDER: The motion is dismissed; the decision of June 22, 2000 is affirmed.