



U.S. Department of Justice

Immigration and Naturalization Service

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



File: WAC-96-168-50295 Office: California Service Center

Date: JAN 29 2001

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, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:
[Redacted]

PUBLIC COPY

identification data deleted 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


Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, California Service Center. The director affirmed her decision, in part, on two motions to reopen. The Associate Commissioner for Examinations dismissed an appeal from the director's most recent decision. The matter came before the Associate Commissioner on motion to reconsider. The motion was dismissed. The matter is again before the Associate Commissioner on motion to reconsider. The motion will be dismissed.

The petitioner is a church that 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), to serve as a Sunday school teacher.

The center director, on motion to reopen, affirmed her previous decision to deny the petition in a decision dated January 13, 1998. The Associate Commissioner dismissed an appeal from that decision finding that the petitioner had failed to establish the beneficiary's two years of continuous religious work experience. The Associate Commissioner also found that the petitioner had failed to establish that it had the ability to pay the proffered wage. The petitioner filed an untimely motion to reopen, which was dismissed by the Associate Commissioner.

On motion, counsel argues that the beneficiary is eligible for the benefit sought.

8 C.F.R. 103.5(a)(1)(i) requires that 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.

The previous motion was dismissed in a decision dated July 13, 2000. The petitioner filed the motion with the Associate Commissioner on or about August 9, 2000. The Associate Commissioner's previous decision clearly instructed the petitioner to file any motion with the office which originally decided its case. The petitioner's instant motion was properly filed at the California Service Center on August 30, 2000. The respondent's motion was untimely filed and will be dismissed.

ORDER: The motion is dismissed.