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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



Public Copy

File: EAC-98-001-54103 Office: Vermont Service Center Date: JUL 16 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 (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: Self-represented

redacting data related 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

*Gyena L. Rosenly*  
Robert B. 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/reconsider. The motion will be dismissed.

The petitioner is described as 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 a minister.

The petitioner filed a Form I-360 petition for special immigrant classification on September 25, 1997. The petition was denied in a decision dated May 5, 1998. The petition was denied on the grounds that the petitioner failed to establish that it was a qualifying religious organization pursuant to 8 C.F.R. 204.5(m)(3), that it had tendered a qualifying job offer pursuant to 8 C.F.R. 204.5(m)(4), that it had demonstrated the ability to pay the proffered wage pursuant to 8 C.F.R. 204.5(g)(2), and 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).

The petitioner filed a timely Notice of Appeal from the decision. The Associate Commissioner, by and through the Director, Administrative Appeals Office ("AAO"), dismissed the appeal finding that the petitioner had failed to overcome any of the four grounds of ineligibility cited by the center director in the notice of decision.

The appellate decision was issued October 6, 1999, and contained instructions advising the petitioner of procedure for filing a motion within thirty days. Within the allotted time, the petitioner filed a statement titled "Notice of Appeal" which will be treated as a motion.

In the statement on motion, an official of the petitioner offered an additional description of the proposed position and stated that the church has 160 members with a single employee, its pastor. The official further stated that a financial statement was enclosed, however, no such document was received by the Service. The official enclosed a statement from a municipal association of Baptist churches opining that the petitioner is included in the group tax exemption of the Florida State Baptist Convention.

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.

According to 8 C.F.R. 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

On review, the petitioner has not presented any new material facts, other than a statement of the size of the congregation, or established that any new facts were somehow unavailable at the time the appeal was filed. Therefore, the petitioner has failed to establish that this action meets the applicable requirements of a motion to reopen.

The petitioner also has not argued that the decision was based on an incorrect application of law or Service policy at the time it was issued. Therefore, the petitioner has failed to establish that this action meets the applicable requirements of a motion to reconsider.

As this action fails to meet the requirements of either a motion to reopen or a motion to reconsider, the motion must be dismissed.

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

**ORDER:** The motion is dismissed.