



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



Public Copy

File: [Redacted] 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: [Redacted]

Identifying 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


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 reconsider was dismissed by the Associate Commissioner. The matter is again before the Associate Commissioner on motion to reconsider. The motion will be dismissed.

The petitioner is described as an independent Islamic religious organization. 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 religious instructor.

The petitioner filed a Form I-360 petition for special immigrant classification on January 13, 1998. The petition was denied in a decision dated July 1, 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). The director specifically found that the claim that the beneficiary had donated voluntary services to the petitioner was insufficient to satisfy the requirement that she had been continuously carrying on a religious occupation for the two-year period.

The petitioner, by and through counsel, filed an appeal from the decision with an appellate brief. The Associate Commissioner, by and through the Director, Administrative Appeals Office ("AAO"), dismissed the appeal finding that the petitioner had failed to overcome the ground for denial. The AAO decision set forth its interpretation of pertinent Service regulations in holding that voluntary participation in activities with a religious organization did not satisfy the requirement of two years of continuous experience in a lay religious occupation necessary for special immigrant classification.

The appellate decision was issued November 30, 1999. Counsel for the petitioner filed a motion to reconsider the decision. The AAO dismissed the motion pursuant to 8 C.F.R. 103.5(a)(4) finding that the petitioner had failed to establish that the prior decision rested on an incorrect application of law.

Counsel now files a second motion arguing that he had articulated an incorrect application of law and cites four federal circuit court decisions to support his argument. Counsel argues, in pertinent part, that:

Thus, the basis of the motion to reconsider is pursuant to 8 CFR 103.5(a)(1)(I) [sic] in that the AAU inappropriately applied the law and the analysis used in reaching the decision, which was inconsistent with the

information provided in the motion. Additionally, this motion is made for the AAU to review its decision in regard to the interpretation of the applicable regulations (*Chudshevid v Immigration and Naturalization Service*, 641 F2d 780 (1981, CA9). The AAU's decision has erred in appraising the facts in this matter in the applicable laws and regulations, (*Osuchukwa v Immigration and Naturalization [sic]*, 744 F2d 1136 (1984, CA5); (*Sanchez v Immigration and Naturalization Service*, 228 US App DC 118, 707F2d 1523 (1983). Furthermore, the AAU must articulate a reasoned basis for its decision, (*Santana-Figueroa v. INS*, 644 F. 2nd 1354, 1356 (9th [sic] Cir. 1981) which it has failed to do. The AAU's decision to dismiss the instant motion to reconsider must therefore be seen as arbitrary, capricious, and unreasonable and a clear abuse of discretion.

In the previous motion counsel disputed the appellate decision asserting that the decision was "arbitrary, capricious, and an abuse of discretion" and submitted a copy of a 21-page statement from the president of the petitioning organization dated June 2, 1998, which had previously been furnished in response to a written notice from the center director on INS Form 797 dated March 12, 1998 requesting additional information.

The arguments raised in the June 2, 1998 statement were considered and found to be unpersuasive in the center director's decision of July 1, 1998 and the appellate decision of November 30, 1998. The AAO therefore found no basis to reconsider its decision and dismissed the motion in its decision of June 29, 2000.

Counsel now seeks to reconsider that decision with the argument cited above. Counsel's argument is not persuasive. First, there is no corresponding section of Title 8 of the Code of Federal Regulations to "8 CFR 103.5(a)(1)(I)." Notwithstanding the error in citation, 8 C.F.R. 103.5(a)(1)(i) provides only that the Service "may, for proper cause shown, reopen the proceeding or reconsider the prior decision."

Second, the argument that the Service "erred in appraising the facts in this matter in the applicable laws and regulations" or in its interpretation of its own regulations is not persuasive. The facts in this matter were not in dispute. Counsel failed to articulate a reason or basis from the cited federal circuit court cases that apply to the instant case involving classification as a special immigrant. In the AAO decision of November 30, 1998, the AAO director explained his interpretation of the regulations as applied to the limited circumstances of a lay worker in a religious occupation in finding that the petitioner's evidence was insufficient to satisfy the statutory and regulatory provisions governing the prior experience requirement. Counsel disagreed with

that interpretation, but failed to advance any evidence to establish that the interpretation was an incorrect application of law in relation to Service policy or precedent.

Third, the implication in counsel's argument that the AAU failed to articulate a reasoned basis for its decision is without merit. The appellate decision set forth at some length the basis of the Service's interpretation.

Accordingly, it must be concluded that the petitioner has failed to sustain its argument that the prior decision was arbitrary, capricious, unreasonable, or an abuse of discretion.

In order to prevail on a motion for reconsideration, a 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." 8 C.F.R. 103.5(a)(3). Counsel has not established that the decision was based on an incorrect application of law or Service policy at the time it was issued. Therefore, counsel failed to establish that this action meets the applicable requirements of a motion to reconsider and the motion must be dismissed pursuant to 8 C.F.R. 103.5(a)(4).

It is noteworthy that in the June 2, 1998 statement from the petitioner, the distinction between the special immigrant religious worker classification of Section 203(b)(5) of the Act and the nonimmigrant temporary worker classification for religious workers of Section 101(a)(15)(R) of the Act are discussed. Specifically, that the nonimmigrant classification does not contain a requirement for two years of prior work experience. It is evident that the petitioner could apply for temporary worker classification of the beneficiary under Section 101(a)(15)(R) of the Act and then apply for immigrant classification once the two-year prior experience requirement has been satisfied.

ORDER: The motion is dismissed.