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

C1

[redacted]

Public Copy

JUL 24 2001

File: [redacted] Office: Vermont Service Center Date:

IN RE: Petitioner:
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

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. The matter is again before the Associate Commissioner on motion to reopen/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 him as a religious instructor.

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 28, 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 reconsider" dated June 21, 2000, that was received by the Service July 12, 2000. The motion was therefore untimely filed. In its discretion and assuming unavoidable delays in postal delivery, the motion will be accepted as timely filed.

In the brief on motion, counsel acknowledged the three grounds of ineligibility cited in the AAO decision. Regarding the prior experience requirement, counsel asserted that the beneficiary should be considered to have been engaged in a religious occupation since entering the United States because he "had been actively involved in organizing establishment of the Mosque in the US." Counsel also submitted an additional written statement purportedly from the beneficiary's former employer in Pakistan. Regarding the nature of the position, counsel asserted that the beneficiary came to the United States specifically at the request of an organization called the Islamic Research and Advisory Bureau to serve the Muslim immigrant community from Pakistan. Regarding the ability to pay

the proffered salary of $25,000 per year, counsel asserted that bank statements are now submitted that demonstrate the petitioner's financial status.

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.

In order to prevail on a motion to reopen, a petitioner must establish that the new facts and/or evidence to be presented are material and were unavailable at the time the prior decision was issued. 8 C.F.R. 103.5(a)(2). Counsel has not established the new documentation furnished on motion was somehow unavailable at the time the appeal was filed. Therefore, counsel failed to establish that this action meets the applicable requirements of a motion to reopen.

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 argued or established that 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.

Both the center director and the AAO thoroughly reviewed the record of proceeding and issued detailed written decisions specifying the grounds of ineligibility. By this motion, counsel essentially seeks readjudication of the appeal and of the original petition underlying the appeal. There is no provision for such an additional opportunity for administrative review.

ORDER: The motion is dismissed.