



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 24 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

Myra L. Rosenberg
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. 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 her as a lay religious counselor at an annual salary of \$15,000.

The petitioner filed a Form I-360 petition for special immigrant classification on September 25, 1997. The petition was denied in a decision dated July 29, 1998. The petition was denied on the grounds that the petitioner failed to establish that the proposed position constituted a qualifying "religious occupation" as defined at 8 C.F.R. 204.5(m)(2) and failed to establish that the petitioner was a qualifying religious organization pursuant to 8 C.F.R. 204.5(m)(3).

The petitioner filed a timely appeal from the decision. The Associate Commissioner, by and through the Director, Administrative Appeals Office ("AAO"), dismissed the appeal in a decision dated May 24, 2000. The AAO found that the petitioner failed to establish that the proposed position of lay religious counselor was a traditional religious occupation in its denomination. The decision noted that the duties of the position primarily involved providing Spanish-language translation services to the clergy of the church and were not considered qualifying duties comprising a religious occupation. The AAO further found that the petitioner failed to submit the required documentation to show that it was a qualifying 501(c)(3) tax exempt religious organization. The AAO additionally held that the petitioner failed to submit proof that the beneficiary had been continuously employed in a religious occupation for the preceding two years as required by 8 C.F.R. 204.5(m)(1) and failed to submit the documentation required to show the ability to pay the proffered wage pursuant to 8 C.F.R. 204.5(g)(2).

The petitioner's representative timely filed a motion to reopen the matter submitting a written statement, proof that the petitioner is a tax exempt member church of the United States Catholic Conference, and a series of statements from parishioners testifying that the beneficiary is active in a variety of church activities.

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. 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." Id.

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

The petitioner's representative has submitted documentation overcoming one of the four cited grounds of ineligibility. The representative has not shown that its new evidence was previously unavailable. The representative also has not shown that the previous decision was based on an incorrect application of the law. Counsel essentially seeks a readjudication of the underlying petition and a 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, counsel failed to establish that this action meets the applicable requirements of a motion and must be dismissed.

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

ORDER: The motion is dismissed.