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

[redacted]

Public Copy

File: EAC-00-028-50814 Office: Vermont Service Center Date: JUL 30 2001

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: Self-represented

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. The matter is again before the Associate Commissioner on motion to reopen. The motion will be dismissed.

The petitioner is an individual who seeks classification as a special immigrant religious minister pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), in order to be employed as an associate pastor by a United States church at a salary of $39,000 per year.

The petitioner filed a Form I-360 petition for special immigrant classification on September 30, 1997. The petition was denied in a decision dated April 30, 1998. The petition was denied on the grounds that the petitioner failed to submit the required documentation to establish that the proposed employer, the Reach Out Family Worship Center, had the ability to pay the proposed wage as required under 8 C.F.R. 204.5(g)(2).

The petitioner filed an appeal from the decision with additional evidence. The Associate Commissioner, by and through the Director, Administrative Appeals Office ("AAO"), dismissed the appeal on October 6, 1999, finding that the evidence submitted failed to satisfy the specific documentary requirements of the regulation and thereby failed to overcome the grounds for denial of the petition. The AAO decision further found that the petitioner had failed to demonstrate that he had been solely and continuously carrying on the vocation of a minister for at least the two years preceding the filing of the petition as required by 8 C.F.R. 204.5(m)(1).

On motion, the petitioner submits additional documentation addressing the two grounds of ineligibility cited in the decision of October 6, 1999.

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 were unavailable at the time the prior decision was issued. According to 8 C.F.R. 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

On motion, the petitioner has submitted new evidence in support of the original petition. He has not advanced a claim that the new evidence was somehow unavailable at the time the petition was filed, at the time the center director issued a request for additional evidence, or at the time the appeal was filed. The evidence submitted does not show that the petitioner was working solely and continuously as a minister between September 30, 1995 and September 30, 1997.

Two of the letters submitted on motion refer to the petitioner as a skilled auto mechanic and carpenter. If the petitioner was working in these fields during the two-year period preceding the filing date of the petition, the petition must be re-filed after the petitioner has worked solely as a minister for a two-year period. The record contains payroll records dating from January 1997, but the record does not contain such records covering the two-year period before the petition was filed - September 30, 1995 to September 30, 1997. The petitioner has failed to overcome the objections of the director and the Associate Commissioner on motion.

The burden of proof in these proceedings rests with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

ORDER: The motion is dismissed.