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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[REDACTED]

File: [REDACTED] Office: VERMONT SERVICE CENTER

Date:

JUL 02 2003

IN RE: Petitioner:
Beneficiary:

[REDACTED]

Petition: Immigrant 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)

ON BEHALF OF PETITIONER:

[REDACTED]

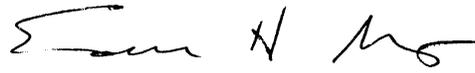
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform counseling and other services. The director determined that the petitioner had not established that the position qualified as a religious occupation, or that it would be able to pay the beneficiary's proffered wage. For these reasons, the director denied the petition on October 31, 2000.

The petitioner appealed the director's decision, stating that further evidence would be forthcoming within 90 days. No further submission arrived during the requested time period. The AAO summarily dismissed the appeal on August 23, 2001. At that time, the AAO advised the petitioner that, pursuant to 8 C.F.R. § 103.5(a)(1)(i), "[a]ny motion . . . 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 [now the Bureau] where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner."

The petitioner did not file a motion during the 30-day period following August 23, 2001. The petitioner's appeal is dated June 19, 2002, and the Service did not receive the motion until more than a month later, on July 25, 2002. Pursuant to the regulation cited above, the petitioner must establish that the delay in filing was reasonable and beyond the control of the petitioner.

On motion, the petitioner states "[o]ur legal counsel had informed us we must . . . wait for permission to file a brief," and that the petitioner did not file a timely motion to reopen because "[o]ur counsel advised that we would be unsuccessful." Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).

The petitioner adds "[t]he main reason for not seeking to reopen our appeal is because we have been sidetracked . . . [by] the repercussions of the terrorist attacks on New York City." The attacks of September 11, 2001, did indeed take place during the 30-day period allotted for the filing of a motion, and obviously the attacks and their aftermath were beyond the control of the petitioner. The petitioner has not, however, persuasively established that the delay of nearly a year before filing the motion was reasonable, or that the petitioner was demonstrably unable to prepare and submit the motion before late July of 2002.

Furthermore, the sole basis for the summary dismissal of the appeal was the petitioner's failure to submit a brief during the time requested. On motion, the petitioner does not contest this finding, and even stipulates that the brief was withheld. The petitioner submits, on motion, the documentation that presumably would have been submitted on appeal. If the petitioner does not or cannot overcome the grounds for summary dismissal, the petitioner cannot overcome this deficiency by revisiting the grounds for the underlying denial. The appeal was the petitioner's opportunity to address the grounds for denial. The petitioner cannot, at this late date, simply resume the appeal where it left off in November 2000, and the submission of documents and arguments that rightly should have been submitted several years earlier cannot nullify the administrative decisions rendered since that time. The motion now at hand is not simply an extension of the initial appeal.

For the above reasons, the AAO cannot accept the petitioner's untimely motion.

ORDER: The motion is dismissed.