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U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
EAC 01 230 56983

Office: VERMONT SERVICE CENTER

Date: FEB 18 2015

IN RE:

Petitioner:
Beneficiary:



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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and “recalendar.” The motion will be dismissed, the previous decision of the AAO will be affirmed and the petition will be denied.

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 (the Act), 8 U.S.C. § 1153(b)(4).

The director denied the petition on July 30, 2002 after determining that the petitioner failed to establish that the position offered to the beneficiary qualifies as a religious occupation.

On August 29, 2002,¹ the petitioner, through counsel, filed a timely appeal but requested an additional 30 days in which to submit “a brief and/or evidence.”

Nearly one year later, on August 21, 2003, no further documents were received and the AAO summarily dismissed the petitioner’s appeal.

On September 19, 2003, counsel for the petitioner filed the instant motion to reopen and “recalendar.” Counsel does not explain the nature of the request to “recalendar.” In his motion, counsel asserts that a “Memorandum of Law and Fact” was submitted to CIS on September 24, 2002, and that CIS erred “in not transmitting the said [m]emoradum . . . to the Administrative Appeals Office for inclusion in its files.”

The regulation at 8 C.F.R. § 103.5(a)(2) states that a “motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.”

Though counsel provides a copy of the memorandum purportedly submitted subsequent to the filing of the appeal, he fails to provide any evidence, such as a certified mail receipt or mail tracking number, to support his assertion that this document was actually sent or received by CIS. The statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

As the petitioner’s motion to reopen does not meet the requirements of the regulations it must be dismissed.

ORDER: The motion is dismissed. The previous decision of the AAO is affirmed. The petition is denied.

¹ Though counsel’s motion indicates the appeal was filed on August 26, 2002, the date and time stamped on the petitioner’s Form I-290B reflects the appeal was received by the service center director on August 29, 2002 at 4:22 P.M.