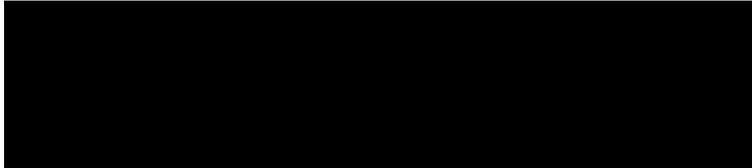




U.S. Citizenship
and Immigration
Services

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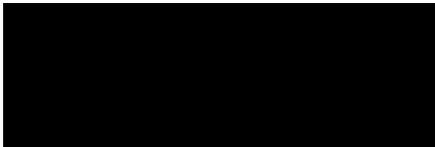
Office: TEXAS SERVICE CENTER Date: **AUG 09 2006**

IN RE: Petitioner:
Beneficiary:



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)

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.

R Robert P. Wiemann, Chief
Administrative Appeals Office

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

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 Citizenship and Immigration Services (CIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

In summarily dismissing the petitioner's appeal, the AAO noted that counsel failed to submit a brief in support of the appeal and that the petitioner failed to specifically identify any erroneous conclusion of law or statement of fact for the appeal.

On motion, counsel states that a brief was timely filed. Counsel submits a confirmation from the United States Postal Service, reflecting that a document was delivered to the Texas Service Center on December 24, 2003, within 30 days of the date that the appeal was filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(vi) provides that a brief may be filed with the Form I-290B, Notice of Appeal to the Administrative Appeals Unit. 8 C.F.R. § 103.3(a)(2) also provides:

(vii) *Additional time to submit a brief.* The affected party may make a written request to the AAU for additional time to submit a brief. The AAU may, for good cause shown, allow the affected party additional time to submit one.

(viii) *Where to submit supporting brief if additional time is granted.* If the AAU grants additional time, the affected party shall submit the brief directly to the AAU.

Additionally, the instructions with the Form I-290B are specific in when and where to submit a brief. Paragraph 4 provides, in pertinent part:

You may submit a brief, statement, and/or evidence *with* this form. Or you may send these materials to the AAU within 30 days of the date you sign this form. You must send any materials you submit *after* filing the appeal to [the] Administrative Appeals Unit. [Emphasis in original.]

Counsel filed his appeal with the service center instead of with the AAO. The brief was not a part of the record at the time the AAO issued its decision.

The petitioner has not established that service error resulted in the summary dismissal of its appeal. Additionally, as the petitioner failed to present new facts or to cite any precedent decisions in support of its motion to reconsider and does not argue that the previous decisions were based on an incorrect application of law or CIS policy, the petitioner's motion will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. 8 C.F.R. § 103.5(a)(4) states that “[a] motion that does not meet applicable requirements shall be dismissed.” Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.