U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

File: EAC 01 177 54422 Office: VERMONT SERVICE CENTER Date: AUG 25 2004

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)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The AAO affirmed its decision, as well as the decision of the district director, on a motion to reconsider. The matter is now before the AAO on a second motion to reconsider. The motion will be dismissed, the previous decision of the AAO will be affirmed and the petition will be denied.

The regulation at 8 C.F.R. § 103.5(a)(3) states:

> 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. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based upon the evidence in the record at the time of the initial decision.

The petitioner stated the following as its reason for the motion for reconsideration:

> The petitioner wishes to submit some additional documentation asked/inquired in the AAO decision letter dated August 21, 2003 . . . However, it is submitted that all of the record/files of [the petitioner] are in the [New York district office]. So to submit additional information/documentation of beneficiary . . . whose file is also in afore [sic] said Immigration office of New York. At present our organization does not know when the [beneficiary's] file will be received by us and we have not any record of the beneficiary in our office. In the situation, further evidences [sic] and documentation cannot be submitted unless the file of the beneficiary is received by our organization from the [district office].

As cited above, in order to meet the requirements of a motion to reconsider, the petitioner must establish that the previous decision was based upon an incorrect application of law or policy and must be supported by precedent decisions. In the request for reconsideration, the petitioner does not reference any precedent decision and makes no assertion that the AAO's decision was based upon an incorrect application of law or policy.

Moreover, the regulations require that the petitioner establish the decision was incorrect based upon the evidence contained in the record at the time of the initial decision. Therefore, the petitioner's claim that "additional documentary evidence [sic] will be submitted after receiving the beneficiary's file" from the New York district office is without merit. Further, as the regulation requires a decision to be based upon evidence in the record at the time of the initial decision, even if the petitioner were to submit additional evidence, it could not be considered with this motion for reconsideration.

Finally, although not referenced by the petitioner, we must also note that the petitioner's request also does not meet the requirements of 8 C.F.R. § 103.5(a)(2) for a motion to reopen as the petitioner has failed to state any new facts supported by affidavits or other documentary evidence.

As the petitioner's motion for reconsideration does not meet the requirements of the regulations it must be dismissed.

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