

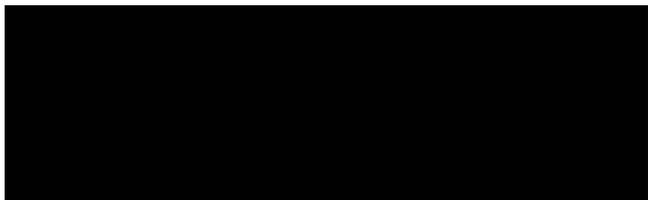
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U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. 3000
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U.S. Citizenship
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Services

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FILE: [Redacted]
EAC 04 122 50312

Office: VERMONT SERVICE CENTER

Date: OCT 16 2008

IN RE: Petitioner: [Redacted]
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)

ON 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, Chief
Administrative Appeals Office

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 matter is now before the AAO on a motion to reconsider. The motion will be dismissed.

The director denied the petition because the petitioner failed to establish that her prospective employer was a bona fide nonprofit religious organization. The AAO affirmed this decision on appeal. The petitioner now moves the AAO to reconsider its decision.

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).

On motion, the petitioner states that her prospective employer underwent a name change and applied for certification of its tax-exempt status from the Internal Revenue Service (IRS). The petitioner submits a copy of a June 20, 2007 letter from the IRS, granting her prospective employer tax-exempt status pursuant to sections 501(c)(3) and 170(b)(1)(A)(i) of the Internal Revenue Code. However, the petitioner does not assert, and submits no evidence, that the AAO's prior dismissal of the appeal was in error.

The petitioner failed to provide requested evidence of her prospective employer's tax-exempt status in response to the director's request for evidence dated April 1, 2005. On that basis alone, the petition may not be approved. Only on motion does the petitioner submit the requested evidence. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Similarly, the AAO cannot now consider that requested evidence on motion. If the petitioner had wanted the submitted evidence to be considered, she should have submitted the documentation in response to the director's request for evidence. *Id.*

As discussed, the petitioner does not argue that the previous decisions were based on an incorrect application of law or CIS policy. Accordingly, 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. The regulation at 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 reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.