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U.S. Citizenship
and Immigration
Services

C

APR 21 2005

FILE:

WAC 01 222 55838

Office: CALIFORNIA SERVICE CENTER

Date:

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:

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.

Mai Jensen

S Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California 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. The motion will be dismissed, the previous decision of the AAO will be affirmed and the petition will be denied.

The director denied the petition on September 26, 2002 after determining that the beneficiary's "unpaid volunteer work does not equate to two years of continuous work experience."

The petitioner filed a timely appeal with additional documentation. The AAO dismissed the appeal on September 23, 2003, affirming the director's finding that the petitioner failed to establish the beneficiary's continuous employment as an associate pastor for the requisite two-year period prior to the filing of the petition.

Rev. [REDACTED] Senior Pastor of the petitioning church, filed the instant motion to reopen on October 23, 2003.

The regulation at 8 C.F.R. § 103.5(a)(2) states, "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."

The petitioner claims that "[C]ongress would have recognized [REDACTED] has met the requirement of I-360," and cites to the American Competitiveness in the Twenty-first Century Act, Public Law 106-313, 114 Stat. 1251 (2000)(AC21). The provision that the petitioner references allows an alien who is the beneficiary of an approved H-1B petition to begin working for a subsequent H-1B employer as soon as the new H-1B employer files a Form I-129 petition. It does not contain similar provisions for R-1 nonimmigrants.

In support of the petitioner's motion, Rev. [REDACTED] provides a letter acknowledging the fact that the beneficiary was employed as a volunteer during the requisite two-year period, as well as other documents, virtually all of which were previously submitted. The only new documents are an October 2003 list of signatures from individuals who find the beneficiary's work "vital to our ministry work in the Asian Community of Northern California" and a new personal statement from the beneficiary [REDACTED] attempts to explain the reason for the beneficiary's voluntary employment, he fails to present any new facts or documentary evidence to support the motion to reopen and to overcome the previous decision of the AAO.

Without any new facts and documentary evidence to support the motion to reopen, the regulation mandates that the motion be dismissed.

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