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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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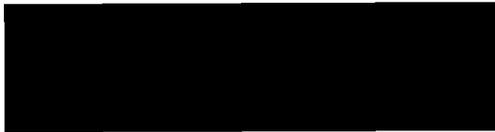
FILE  Office: CALIFORNIA SERVICE CENTER Date: JUL 08 2010  
EAC 01 177 55629

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,



Chief, Administrative Appeals Office

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**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant petition and certified its decision to the Administrative Appeals Office (AAO) for review. The AAO affirmed the director's decision on December 22, 2006 with a separate finding of willful misrepresentation of a material fact. On June 24, 2009, the AAO reopened this matter pursuant to 8 C.F.R. § 103.5(a)(5)(ii) for the limited purpose of revisiting the finding of willful misrepresentation of a material fact; the AAO did not disturb the denial of the underlying petition. The AAO allowed the petitioner 84 days to address the grounds for that finding. On October 14, 2009, the AAO affirmed its finding of willful misrepresentation of a material fact, and stated that the record contained no response from the petitioner. The petitioner submitted a timely response, which did not reach the record before the AAO rendered its decision. On January 14, 2010, the AAO reopened the proceeding strictly on procedural grounds, to acknowledge the petitioner's timely submission of correspondence. The AAO reaffirmed its finding of willful misrepresentation of a material fact. The matter is now before the AAO on appeal. The AAO will reject the appeal.

In its previous order, dated March 17, 2010, the AAO stated:

On September 11, 2009, the petitioner, through counsel, stated: "The petitioner hereby withdraws the petition," adding: "The petitioner reiterates that it has perpetrated no fraud." Counsel did not address or dispute the AAO's finding that the beneficiary also participated in the willful misrepresentation, as described in previous decisions and correspondence. The record contains no further correspondence from the petitioner or from counsel.

We note that *Matter of Cintron*, 16 I&N Dec. 9 (BIA 1976) prohibits the denial of a petition after its withdrawal. Here, however, the petition has been denied since 2006. The AAO's subsequent action has only involved the finding of willful misrepresentation.

An applicant or petitioner may withdraw an application or petition at any time until a decision is issued by USCIS [U.S. Citizenship or Immigration Services] . . . . However, a withdrawal may not be retracted. 8 C.F.R. § 103.2(b)(6). Here, USCIS issued its decision nearly three years before the petitioner attempted to withdraw the petition. The petition itself is administratively closed and cannot be withdrawn at this late date.

By attempting to withdraw the petition, the petitioner has signaled its intent to abandon all attempts to pursue this petition. The petitioner's apparent failure to respond to the AAO's latest correspondence reinforces that conclusion. The AAO now considers this matter closed.

On April 19, 2010, the director received a Form I-290B Notice of Appeal or Motion, indicating that the petitioner is "filing an appeal." There is, at this point, no appealable matter before the AAO. The petition has been denied and administratively closed for some time, and there is no provision for



an appeal of an AAO finding of material misrepresentation. As we have observed in prior decisions in this proceeding, the petitioner has had numerous opportunities to rebut the finding of material misrepresentation, but has never presented any meaningful or substantive rebuttal of the specific points raised by the AAO. This has not changed in the latest proceeding.

Because there is nothing to appeal, we must reject the appeal.

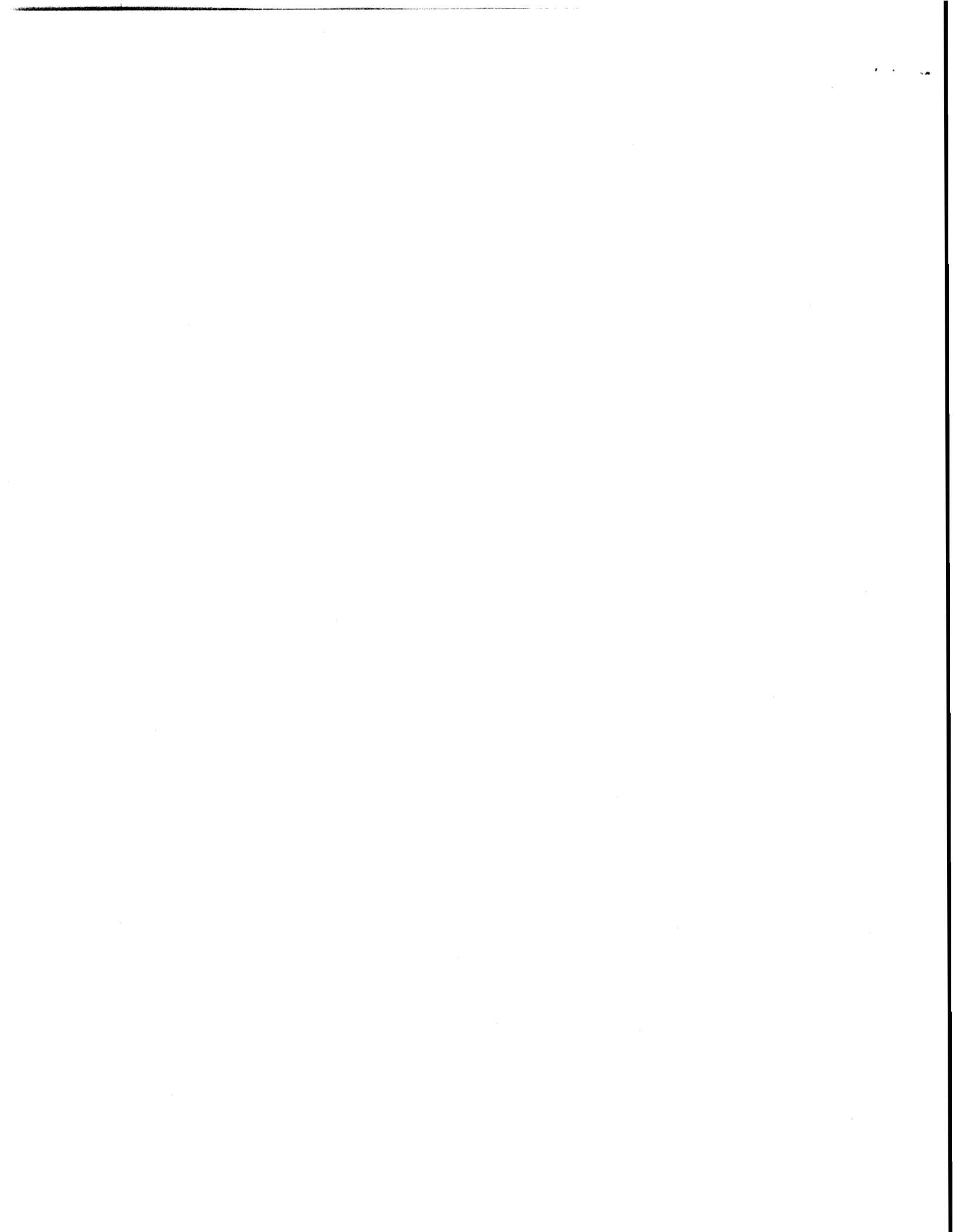
As an alternative finding, we note that the Form I-290B was signed by one [REDACTED], who provides no title or evidence of any position of authority within the petitioning organization. Because the record contains no evidence that [REDACTED] is an authorized official of the petitioning entity, we cannot find that the appeal was properly filed. See the USCIS regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(I), which states: An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

As another alternative finding, even if we were to accept the appeal, the appeal consists solely of the assertion that the petitioner will submit further evidence within 30 days. More than two months have elapsed since the April 19, 2010 filing of the appeal, and the record contains no further submission from the petitioner. Because the appeal contains nothing to identify specifically any erroneous conclusion of law or statement of fact for the appeal, the USCIS regulation at 8 C.F.R. § 103.3(a)(1)(v) would require us to summarily dismiss the appeal even if we found it to have been properly filed.

The record permits yet another alternative finding. If we were to disregard the clear annotation on Form I-290B that the filing is an “appeal” rather than a “motion,” we could deem the appeal to be a motion to reopen and/or reconsider the AAO’s prior decision. Even so, this, too, would fail, because the filing does not meet the requirements of a motion to reopen or a motion to reconsider.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). 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 on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The latest filing states no new facts; includes no affidavits or other documentary evidence; states no reasons for reconsideration; cites no pertinent precedent decisions; and fails to establish that the AAO’s decision was incorrect based on the evidence of record at the time of the initial decision. Therefore, even if we were to consider the new filing to be a properly filed motion, we would have to dismiss that motion as required by the USCIS regulation at 8 C.F.R. § 103.5(a)(4), which states that a motion that does not meet applicable requirements shall be dismissed. (We further note that, while the USCIS regulation at 8 C.F.R. § 103.3(a)(2)(vii) permits a petitioner to supplement a



previously-filed appeal, no comparable provision exists to allow a petitioner to supplement a previously-filed motion.)

The petitioner, who last year sought to withdraw the petition outright, has forfeited numerous opportunities to overcome the significant and substantial evidence that supported the AAO's finding of material misrepresentation. The latest filing does nothing to change this persistent pattern.

The AAO will reject the appeal for the above stated reasons, noting the existence of several independent and alternative bases for rejection or summary dismissal. There exists no basis by which the AAO could possibly consider the submission of April 19, 2010 to be a substantive and properly filed appeal or motion.

**ORDER:** The appeal is rejected.

