



U.S. Citizenship
and Immigration
Services



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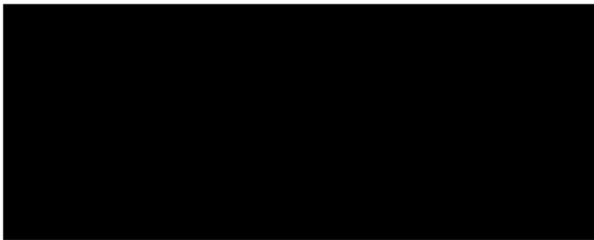
DATE: OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

DEC 24 2012

IN RE: Petitioner: [REDACTED]
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)

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) rejected an appeal improperly filed by the beneficiary. The matter is now before the AAO on a motion to reopen and reconsider. The AAO will dismiss the motion.

The petitioner, a church belonging to [REDACTED] filed the Form I-360 petition on August 31, 2009. It seeks to classify the beneficiary as a 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), to perform services as a church business administrator. The director denied the petition on April 2, 2010, having determined that the petitioner had not established that the beneficiary had the required two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

The beneficiary signed Form I-290B, Notice of Appeal or Motion, and filed an appeal on May 3, 2010. The AAO rejected the appeal on January 24, 2012, because the beneficiary lacked standing to appeal the denial of the petition. *See* 8 C.F.R. §§ 103.3(a)(1)(iii) and (2)(v)(A)(I).

The petitioner has now filed a motion to reopen and reconsider the proceeding. 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 USCIS 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). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The petitioner's motion, filed on February 27, 2012, does not address or contest the rejection of the previous appeal. The petitioner submits no new facts or evidence to show that the appeal was properly filed. Therefore, the motion does not qualify as a motion to reopen. Likewise, the petitioner has not claimed or demonstrated that the rejection of the appeal was based on an incorrect application of law or USCIS policy, or that the rejection was incorrect based on the evidence of record at the time the AAO issued the rejection notice. Therefore, the motion does not qualify as a motion to reconsider.

The only issue that petitioner addresses on motion is the basis for the director's denial of the underlying petition. The AAO, however, cannot and will not consider the petitioner's assertions and evidence in that regard without a showing that the AAO improperly rejected the appeal. The filing of a motion does not entitle the petitioner to a readjudication of the petition as though the improperly filed appeal had never happened.

ORDER: The motion is dismissed.