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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



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DATE: FEB 02 2012 OFFICE: CALIFORNIA SERVICE CENTER

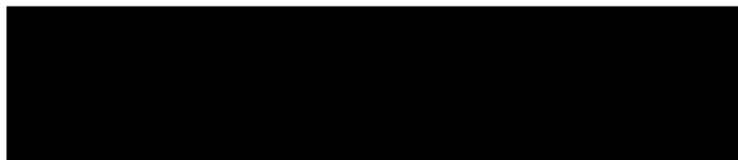
FILE: 

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center (the director) on August 22, 2007. The matter then came before the Administrative Appeals Office (AAO) on appeal. The AAO subsequently remanded the petition for a new decision based on revised regulations. On July 10, 2007, the director again denied the petition and certified the decision to the AAO. On February 25, 2010, the AAO affirmed the decision of the director and dismissed the appeal. The matter is currently before the AAO on a motion to reconsider. The motion to reconsider will be dismissed.

The petitioner is a Pentecostal Christian denomination. 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 an outreach/education minister. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous, qualifying work experience immediately preceding the filing date of the petition. The AAO affirmed this decision, finding that the petitioner had effectively conceded the director's finding that the beneficiary was not lawfully employed as a religious worker during the two-year qualifying period and dismissed the appeal. We incorporate the AAO's February 25, 2010 decision by reference herein.

On March 26, 2010, the petitioner timely filed a motion to reconsider the AAO's decision. The regulation at 8 C.F.R. § 103.5(a)(3) states that:

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.

On the Form I-290B, submitted on March 26, 2010, the petitioner states:

The USCIS is and was wrong in failing to note that the alien beneficiary did possess the required background of and for this position as a religious worker and the file is well documented on this point and it was err for the USCIS to fail to make this finding. The error on behalf of the USCIS centers around on the fact that the Rev. Ijeh worked as a religious minister in the H1B category prior to securing her R1 status.

Secondly, the USCIS is again wrong in that they have failed to proper credit both the petitioner, the [REDACTED] and the beneficiary, [REDACTED] with failing to supply the W2 and Tax Returns as requested by the USCIS in an RFE. They were provided and they are sqaurely [sic] in the file.

USCIS has simply done a bit of a sloppy job in securing the information in this case and recognizing what they have.

These statements fail to meet the requirements of a motion to reconsider, cited above. Counsel does not explain how the AAO's decision was incorrect based on the evidence of record at the time of the initial decision. Counsel also does not cite to any pertinent precedent decisions to establish that the AAO's decision was based on an incorrect application of law or Service policy. Further, these arguments have already been raised and addressed by United States Citizenship and Immigration Services (USCIS) in previous filings of record.

In an attachment to the Form I-290B, the petitioner's counsel wrote:

Through both case law and precedent decision the USCIS has both had religious worker regulation forced upon it and has acquiesced in granting relief to religious workers. The USCIS continues to confuse the instant beneficiary with another and *this confusion continues to this day and in the instant petition*. Further, federal court precedent caused a softening of the unauthorized work prohibition. Finally, the USCIS seems to have again confused and failed to credit the USCIS in this instance with regard to *this matter and the petitioner's ability to pay the wage offered to this alien beneficiary*.

A complete brief will be forth coming in forthwith fashion in this instance.

The AAO notes that the petitioner has not filed further arguments or evidence in support of the motion. The regulation requires that motions to reconsider must, when filed, establish that the previous decision was incorrect at the time of the initial decision and be supported by precedent decisions. Thus the regulation does not allow for a supplemental brief in support of a motion to reconsider.

On motion, the petitioner makes four distinct arguments:

- 1) That there is USCIS case law and precedent that the AAO must consider in determining religious worker cases.
- 2) That *USCIS confused the instant beneficiary with somebody else, and that confusion continued in the AAO's decision.*
- 3) That federal court precedent and statute have caused a softening of the unauthorized work prohibition.
- 4) That USCIS has failed to credit the petitioner's ability to pay the beneficiary the proffered wage.

The AAO will note that the petitioner's counsel has not developed these arguments. Counsel has failed to explain what case law, statute, regulation or policy the AAO did not consider in its decision and how it is relevant to the matter at hand. Counsel has also not demonstrated how the AAO confused the beneficiary with someone else in its decision. Further, counsel states that federal court precedent and statute have caused a softening of the unauthorized work prohibition, but has not cited any federal case law restricting the application of the regulation at 8 C.F.R. § 204.5(m)(11) requiring

that the two year qualifying experience must have been authorized by USCIS. Finally, counsel states that the USCIS failed to credit the petitioner's ability to pay the proffered wage, but does not follow up with a further explanation of how or why the USCIS has failed to do so, or cite law or precedent showing how the previous decision was in error. Thus, the AAO finds that the petitioner has not met the requirements of a motion to reconsider, which is set forth in 8 C.F.R. § 103.5(a)(3), and is cited above.

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).

Although not presented by the petitioner as a motion to reopen, the motion does not state new facts to be proved and is not supported by affidavits or other documentary evidence. Thus, the motion does not meet the requirements for a motion to reopen.

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the motion will be dismissed, the proceedings will not be reopened and/or reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed; The petition is denied.