

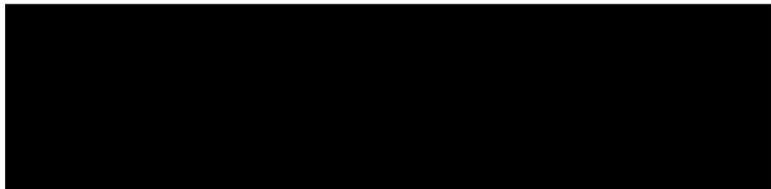
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



C1

DATE: **JUN 22 2012** Office: CALIFORNIA SERVICE CENTER



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:
[Redacted]

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,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and a motion to reconsider. The motions will be dismissed, the previous decision of the AAO will be affirmed, and the petition will remain denied.

The self-petitioner seeks classification 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 youth pastor. The AAO, in its August 11, 2011 dismissal, determined that the petitioner had not established that her prospective employer is operating in the capacity claimed on the petition, that she has the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition, that her prospective employer has the ability to compensate her, and that it qualifies as a bona fide nonprofit religious organization.

Counsel for the petitioner filed the Form I-290B, Notice of Motion, on September 9, 2011. No brief or additional evidence was submitted with the filing of the motion. On the Form I-290B, counsel indicated that “a brief and supporting evidence will be provided within 30 days.” In an accompanying letter, counsel generally stated:

We will provide additional evidence and our brief to AAO within 30 days to prove our case and to prove that new evidence is available to substantiate a motion to reopen and to support by pertinent legal authority showing the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy to substantiate a claim for motion to reconsider.

Counsel did not provide any specific argument or lay out any clear legal grounds to support either motion on the Form I-290B, nor did he identify the evidence that he claimed would be forthcoming to support the motions.

On October 10, 2011, the AAO received a brief in support of the motion as well as additional documentary evidence.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.3(a)(2)(vii) allows for limited circumstances in which a petitioner can supplement an already-submitted appeal. This regulation, however, applies only to appeals, and not to motions to reopen or reconsider. There is no analogous regulation which allows a petitioner to submit new evidence in furtherance of a previously-filed motion.

Similarly, the instructions to the Form I-290B provide that unlike appeals, motions may not be supplemented and specifically state that all evidence “must be submitted with the motion.” The Form I-290B itself contains six boxes, one of which the petitioner must check to indicate whether the petitioner is filing an appeal or motion. Of the three boxes that pertain to motions, all indicate that the brief and/or additional evidence is “attached” to the motion. The form contains no provision for the submission of briefs or evidence after the filing of the motion. Pursuant to the regulation at 8 C.F.R. § 103.2(a)(1), every benefit request must be executed and filed in accordance with form instructions which are incorporated into the regulation.

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. According to 8 C.F.R. § 103.5(a)(3), 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. The plain language of each regulation makes clear that submission of the supporting material and a legal basis for the motion is mandatory, not permissible. This language, combined with the form instructions and the form, explicitly require the motion to reopen and reconsider to be supported at the time of filing.

The petitioner's motion did not meet the regulatory requirements of a motion to reopen or reconsider *at the time of filing*; no provision exists for USCIS to grant an extension in order to await future correspondence that may or may not include evidence or arguments.

ORDER: The motion to reopen and the motion to reconsider are dismissed, the decision of the AAO dated August 11, 2011 is affirmed, and the petition remains denied.