

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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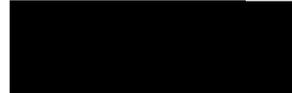
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DATE: JUN 27 2012 OFFICE: CALIFORNIA SERVICE CENTER

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:

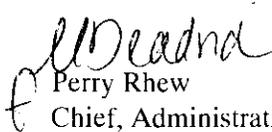
SELF-REPRESENTED

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, (“the director”) denied the employment-based immigrant visa petition. The petitioner timely filed an appeal to the denied petition. The Administrative Appeals Office (“the AAO”) remanded the case to the director. The director denied the petition a second time, and certified the matter to the AAO. The AAO affirmed the director’s decision. The matter is currently before the AAO on a motion to reconsider. The motion to reconsider will be dismissed. The petition remains denied.

The self-petitioner seeks classification as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and National Act (“the Act”) to perform services as a pastor. On April 30, 2007, the self-petitioner filed a Form I-360 petition. On December 3, 2007, the director initially denied the Form I-360 petition. On December 15, 2008, the AAO remanded the case to the director. On September 17, 2009, the director again denied the petition and certified the matter to the AAO, finding that the self-petitioner had not established that he worked continuously in a qualifying occupation or vocation for two full years prior to the filing of the petition. On June 1, 2011, the AAO affirmed the decision of the director.

On June 29, 2011 the self-petitioner¹ filed a motion to reconsider the AAO’s decision. On motion, the self-petitioner submits a Form I-290B with an attached statement and further documents.

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.”

In the statement submitted with the motion to reconsider, the self-petitioner explains that he is submitting new letters from members of his church dated June 26, 2011 verifying that he served in a ministerial capacity during the period from April of 2005 through May of 2006. He submits these new letters to show that although he was described as a “volunteer” because he did not receive any salary or compensation, he actually worked there providing religious services. The self-petitioner also stated that he did not have a religious worker visa and could not receive a salary or compensation from the church, and had to support himself through the generous aid of individual friends. The self-petitioner then explains that this additional evidence and clarification will satisfy the requirements of the regulation at 8 C.F.R. § 204.5(m)(11)(iii).

The self-petitioner’s stated reasons do not meet the requirements of the regulation for a motion to reconsider. The self-petitioner did not use any pertinent precedent decisions to show that the decision was based on an incorrect application of law or Service policy, as required by the regulations for a motion to reconsider. Further, the self-petitioner mentioned that he had to rely on the generous aid

¹ Up until this current motion to reconsider, the self-petitioner was represented by [REDACTED] of [REDACTED] and Associates. On this motion to reconsider, the self-petitioner is representing himself.

of friends to provide for his own support, which in and of itself shows that he does not satisfy the regulation at 8 C.F.R. § 204.5(m)(11)(iii) because this regulation requires that the self-petitioner *provide for his own support*. By stating that he had to rely on the generous aid of his friends, the self-petitioner tacitly admitted that he could not even provide for his own support, and therefore did not satisfy the regulation. Regardless, the self-support provision applies only to aliens in established missionary programs pursuant to 8 C.F.R. 214.2(r)(11)(ii), and does not apply to the self-petitioner.

The self-petitioner also submitted additional documents and argues that these documents show that he satisfies the regulation at 8 C.F.R. § 204.5(m)(11)(iii). Most of these documents that the self-petitioner submitted were dated after the AAO issued its decision. These documents do not meet the standard of a motion to reconsider because the regulation requires that a motion to reconsider show that the decision was incorrect based on the evidence at the time of the initial decision. Further, the documents verifying that the petitioner served in a ministerial capacity from April of 2005 to May of 2006 do not cover the entire qualifying period. The self-petitioner also resubmitted one document that was in the record, a letter dated July 20, 2009. However this letter is insufficient to meet the standards of a motion to reconsider. The self-petitioner does not explain how specifically this letter shows that the AAO was incorrect in reaching its conclusion that the self-petitioner did not meet the standard of this regulation. The self-petitioner has provided no further evidence to overcome the AAO's determination that he failed to provide sufficient evidence of his salaried or non-salaried employment during the requisite period and that such employment was authorized. As a result, the motion to reconsider will be dismissed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The motion to reconsider is dismissed. The petition remains denied.